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No. 2292

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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PACIFIC TOW BOAT COMPANY, a  
Corporation of the State of Washing-  
ton, Owner of the Tug "ARGO,"  
Appellant,  
vs.  
IVOR NORDSTROM, Intervener,  
Appellee.

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In the Matter of the Petition of the  
PACIFIC TOW BOAT COMPANY,  
a Corporation of the State of Washing-  
ton, Owner of the Tug "ARGO," for  
Limitation of Liability.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Western District of Washington,  
Northern Division.

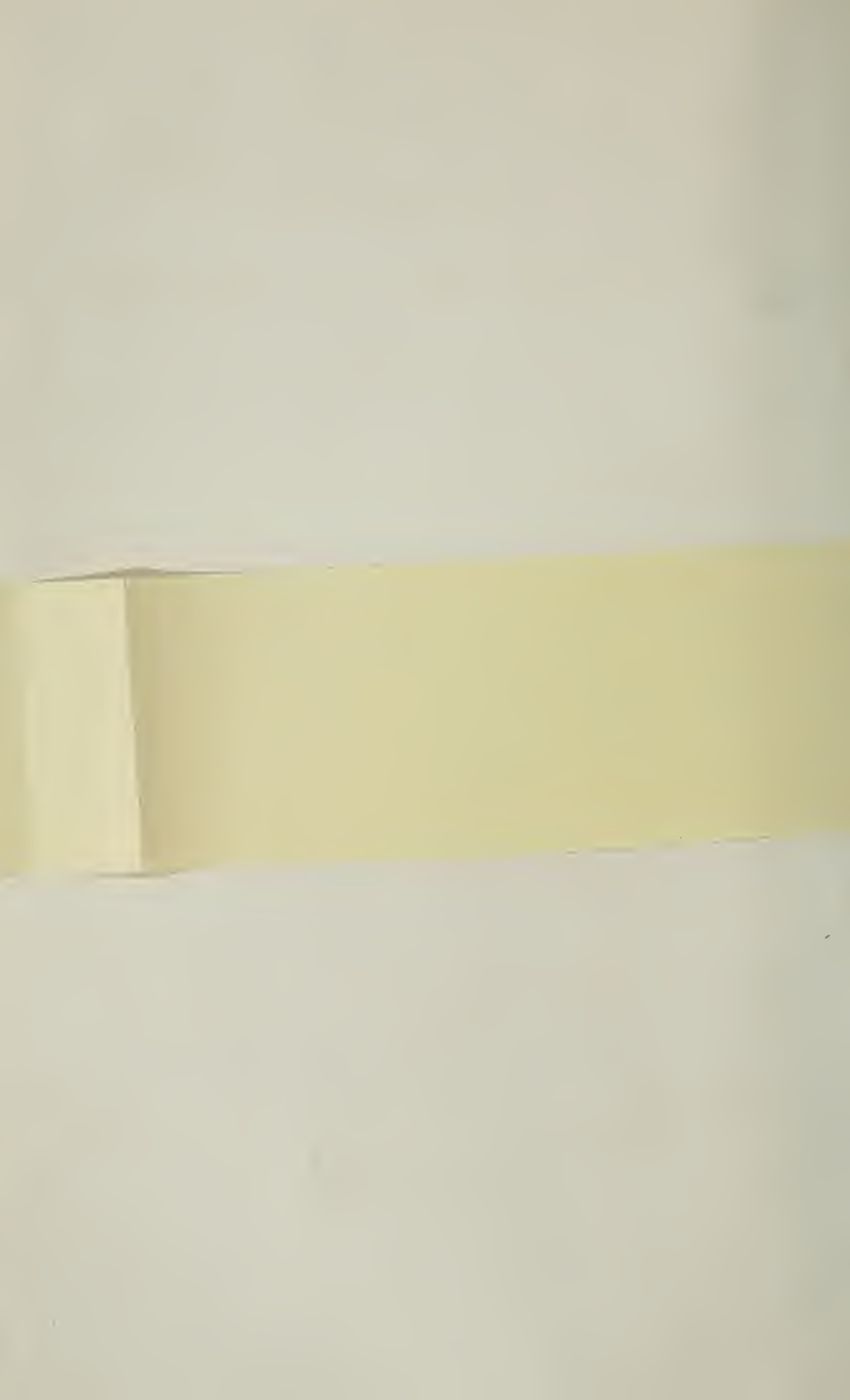
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**FILED**

AUG 26 1913



Records of U. S. Circuit  
Court of Appeals  
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## INDEX.

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	Page
Answer .....	19
Assignment of Errors .....	251
Certificate of Clerk U. S. District Court to Apostles, etc.....	254
Claim of Ivor Nordstrom .....	12
Commissioner's Report .....	31
Counsel, Names and Addresses of.....	1
Decision, Memorandum .....	232
Decree, Final.....	240
Evidence, Certain Offers in .....	224
EXHIBITS:	
Petitioner's Exhibit "A"—Bill of Particu- lars .....	226
Petitioner's Exhibit "F" — Certificate Showing Names of Officers of Pacific Tow Boat Co. on November 22, 1910....	227
Petitioner's Exhibit "G"—Bill of Sale....	228
Exhibits Offered in Evidence, Recital Concern- ing .....	224
Final Decree .....	240
Further Proceedings had .....	224
Libel and Petition of Pacific Tow Boat Co.....	4
Memorandum Decision .....	232
Memorandum of Costs and Disbursements ....	245
Motion for Re-examination and Review .....	237
Names and Addresses of Counsel .....	1
Notice of Appeal .....	249
Notice of Substitution of Proctor for Petitioner	248

Index.	Page
Notice of Taxation of Costs .....	244
Opinion .....	232
Order Directing Issuance of Monition .....	10
Order Fixing Amount of Bond and Staying Proceedings .....	247
Petition for Re-examination and Review .....	237
Petition of the Pacific Tow Boat Co., Libel and	4
Report of Commissioner .....	31
Restraining Order .....	10
Statement of Clerk U. S. District Court Under Admiralty Rule 4.....	2
Statement of Costs and Disbursements .....	245
Stipulation as to Payment of License Fees ....	225
Stipulation That Certain of Claimant's Excep- tions may be Overruled and Denied, etc....	29
Testimony .....	32
 <b>TESTIMONY ON BEHALF OF CLAIMANT:</b>	
BROWNFIELD, FRANK C.....	32
Cross-examination.....	38
Redirect Examination .....	47
Recross-examination .....	50
CHESLEY, W. R.....	54
Cross-examination .....	62
Redirect Examination .....	73
Recross-examination .....	75
Re-redirect Examination .....	75
NORDSTROM, IVOR .....	79
Cross-examination .....	86
Redirect Examination .....	91
Recross-examination .....	92
Re-redirect Examination .....	93



**TESTIMONY ON BEHALF OF CLAIMANT—****Continued:**

OSSINGER, THOMAS F.....	93
Cross-examination .....	96
UNDERWOOD, Dr. F. R.....	76
Cross-examination .....	78
Redirect Examination .....	79
WRIGHT, JOHN S.....	104
Cross-examination .....	107
Redirect Examination .....	114
Recross-examination .....	116

**TESTIMONY ON BEHALF OF PETITIONER:**

ANDERSON, CAPTAIN JOHN L.....	194
Cross-examination .....	196
Redirect Examination .....	205, 207
Recross-examination .....	205, 207
LOVEJOY, HOWARD B.....	174
Cross-examination .....	176
Redirect Examination .....	182
Recross-examination .....	182
Recalled .....	193
M'NEALLY, A. L.....	117
Cross-examination .....	119
Redirect Examination .....	130
Recross-examination .....	132
PRIMROSE, JAMES F.....	209
Cross-examination .....	211
Redirect Examination .....	221
Recross-examination .....	221
RAMWELL, H.....	183
Cross-examination .....	185
Redirect Examination .....	192

**TESTIMONY ON BEHALF OF PETI-  
TIONER—Continued:**

STUDDERT, H. S.....	149
Cross-examination .....	153
Redirect Examination .....	163, 172
Recross-examination .....	165
WAHL, R. W.....	133
Cross-examination .....	136

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

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No. 4779

IN THE MATTER OF THE PETITION OF  
THE PACIFIC TOW BOAT COMPANY, a cor-  
poration of the State of Washington, owner of the  
Tug "Argo," for the limitation of liability.

NAMES AND ADDRESSES OF COUNSEL.

---

C. H. HANFORD, Esq., Proctor for Petitioner and  
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Seattle, Washington.

C. S. HALL, Esq., Proctor for Claimant and Ap-  
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attle, Washington.

HOWARD G. COSGROVE, Esq., Proctor for  
Claimant and Appellee, 817 Alas-  
ka Building, Seattle, Washington.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

---

No. 4779

IN THE MATTER OF THE PETITION OF  
THE PACIFIC TOW BOAT COMPANY, a cor-  
poration of the State of Washington, owner of the  
Tug "Argo" for the limitation of liability.

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APOSTLES ON APPEAL.

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Statement, summarizing the proceedings in the  
above entitled Court and Cause to comply with the  
requirements of Admiralty Rule 4 of the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit.

November 6, 1911, Suit commenced.

The Pacific Tow Boat Company, a corporation of  
the State of Washington, Owner of the Tug  
"Argo," is the name of the only original party.

Ivor Nordstrom the only other party intervened,  
claiming damages for a personal injury.

The Proctors for the respective parties are:  
Byers & Byers, for the Petitioner, originally. C. H.  
Hanford was substituted before the appeal was  
taken. Walter S. Fulton and Calvin S. Hall, Proc-  
tors for Nordstrom.

November, 6, 1911. Petition for limitation of liability filed.  
 “ “ “ Stipulation for Costs filed.  
 “ “ “ Restraining Order filed and entered.  
 “ 7, “ Monition issued.  
 “ 8, “ “ returned.  
 “ “ “ Stipulation for value filed.

No party was arrested, no bail taken and no property attached.

December 23. Claim of Nordstrom filed.  
 “ “ Answer of “ “

January 2, 1912. Stipulation as to amount of liability filed.

The case was referred to W. D. Totten, U. S. Commissioner, to take proof of claims and evidence as to right of Petitioner to exemption from or limitation of liability.

October 28, 1912. Commissioner's report filed.  
 “ “ “ Testimony filed.  
 “ “ “ Exhibits A - B - C - D - E - F & G filed.

The name of the Judge who heard and decided the case is Honorable Clinton W. Howard.

November 29, 1912. Date of final Hearing.

4

March	1, 1913,	Memorandum Decision filed.
"	3, "	Petition for re-examination and review filed.
"	" "	Final Decree entered and filed.
"	7, "	Statement of Costs and notice to tax filed.
"	8, "	Order Staying proceedings pending appeal and fixing amount of bond entered and filed.
"	12, "	Supersedeas Bond filed and entered.
"	14, "	Notice of Substitution of proctor for Petitioner filed.
April	29, 1913,	Petition for rehearing denied.
July	12, "	Notice of appeal filed and served.
"	14, "	Assignment of errors filed.
"	" "	Cost Bond on appeal filed and entered.

### TITLE OF COURT AND CAUSE.

The libel and petition of the Pacific Tow Boat Company, owner of the steamer or tug "ARGO," in the cause of action, civil and maritime, respectfully shows:

#### ARTICLE I.

That your petitioner is a corporation duly created, organized and existing under and by virtue of the laws of the State of Washington, having its principal offices at Seattle, Washington, and owns and

operates a fleet of steamboats or tug boats upon the waters of Puget Sound for the towing of freight, logs, scows, etc., for hire and was engaged thus in the transportation business on Puget Sound at all the times hereinafter mentioned, and was the sole owner of the steamer or tug "Argo" which was engaged in the transportation of cargo by towing same during all of said times.

## ARTICLE II.

That on or about the 22nd day of November, while the said steamer was engaged in navigation upon the navigable waters of the United States and within this district upon the waters of Puget Sound, proceeding on her voyage from Richmond Beach to Seattle, one Ivor Nordstrom was injured upon the said vessel. That the said vessel was at that time manned and equipped in full compliance with the laws of the United States and the rules of navigation in such cases made and provided, and was carrying each, every and all of the lights, equipment and appliances required by the laws and rules and was fully found in every particular and was constructed in all particulars in compliance with the rules established by the laws of the United States.

## ARTICLE III.

As she was proceeding on said voyage said Ivor Nordstrom, who alleges that he was a fireman on the said boat, while engaged in his duties as fireman, claims to have been injured by his foot slip-

ping through a guard, which it was alleged was constructed around the crank-pit, and that the said foot was crushed in said crank-pit, but in truth and in fact the said Nordstrom was injured by his own carelessness and on account of his own fault and negligence, and not on account of any fault in the management, care, equipment, construction or control of any fault whatever of said vessel or its owner.

#### ARTICLE IV.

That the said "Argo" had at the said time no passengers and had earned as freight or for towing on said voyage the sum of no dollars, and she was at the time of the alleged accident as aforesaid under the care and command of R. W. Wahl, Master, duly licensed in full compliance with the laws of the United States and the rules of navigation in such cases made and provided, and was fully manned and equipped as hereinabove set forth.

#### ARTICLE V.

That none of her owners were on the boat or present or had any knowledge of said accident or the cause thereof until after the time of its occurrence.

#### ARTICLE VI.

It is claimed by said Nordstrom and may be claimed by others that by and because of the carelessness and negligence of this petitioner in not



properly constructing the said vessel, and in not furnishing him a safe and proper place to perform his duties, that he was injured and he has brought suit against your petition in the sum of Twenty-five Thousand Dollars (\$25,000.) as owner and operator of said boat in the Superior Court of the State of Washington for damages by and because of said accident and said suit is now pending, but the value of the said steamer "Argo" does not exceed the sum of Five Thousand Dollars (\$5000.00).

#### ARTICLE VII.

That your petitioner has a valid and meritorious defense to the claim of said Nordstrom or any claim that may be brought against your petitioner or the said vessel by and because of the fact that said accident was without the fault of your petitioner or of the said vessel as hereinabove set forth, and on account of the fact that the said steamer and the guard thereof were at the said time of the accident the same as at the time the said vessel was constructed, approved by the officers and inspectors of the United States, and had been approved and passed by said inspectors at each annual inspection since the construction of said vessel.

#### ARTICLE VIII.

Your petitioner therefore on the facts and circumstances aforesaid, desires and claims the benefit of limitation of liability according to the maritime law and practice and the laws of the United States

in such cases made and provided and in manner and form as prescribed by the rules and practice in matters of maritime nature.

#### ARTICLE IX.

Your petitioner further says that the said accident occurred without the design, negligence, privacy or knowledge of your petitioner; that all and singular the premises herein are true and within the admiralty and maritime jurisdiction of this Court.

WHEREFORE your petitioner respectfully prays for the proper relief in that behalf and that you will be pleased to cause due appraisement to be had of the value of the said steamer or tug in the condition in which she was immediately after said accident, and upon the ascertaining of the value, make an order for the payment thereof into Court or for the giving of a stipulation with sureties thereto for the payment into Court whenever the same shall be ordered, pursuant to the laws and rules and practice of this Court and for monition against all persons claiming such loss or damage or injury, and all other persons having any claim of whatsoever nature against the said vessel, citing them and each of them to appear in this Court and make due proof of their respective claims on or before a certain time to be made in said writ; and that public notice of said monition may be given according to law and that the rules and practice of this Court in matters maritime. As to

all such claims your petitioner will contest its liability and the liability of its vessel independently of the limitation of liability claimed as aforesaid, and that the said Nordstrom as plaintiff in the suit aforesaid and all other persons who may hereafter make similar or other claims, may, each and every of them be severally restrained from further prosecution of any suit and all and every suit or suits against your petitioner with regard to any such claim or claims, and your petitioner further prays that it may have such other and further relief as it may be entitled to under the rules and practice of this Court in maritime matters.

PACIFIC TOW BOAT COMPANY,

By A. L. McNealy.

Its Manager.

BYERS & BYERS.

Proctors for Petitioner.

UNITED STATES OF AMERICA

}  
}ss.

WESTERN DISTRICT OF WASHINGTON]

A. L. McNEALY being first duly sworn, on oath deposes and says that he is the Manager of the Pacific Tow Boat Company, a corporation, the petitioner in the within and foregoin petition; that he has read the same, knows the contents thereof and that the matters stated therein are true as he verily

believes and that he verifies this petition on behalf of the Pacific Tow Boat Company.

A. L. McNEALY.

Subscribed and sworn to before me this 6th day of November A. D. 1911.

ALPHEUS BYERS,  
Notary Public in and for the State of Washington,  
residing at Seattle.

Indorsed: Petition. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 6, 1911.  
A. W. Engle, Clerk.

#### TITLE OF COURT AND CAUSE.

#### ORDER.

Upon reading the petition of the Pacific Tow Boat Company, owner of the vessel "ARGO" setting forth that the owner has been sued by one Iver Nordstrom for damages in the sum of Twenty-five Thousand Dollars (\$25,000.) occurring while an employee on said vessel, while said vessel was en-route in the Waters of Puget Sound; and that said vessel is of the value of Five Thousand Dollars (\$5000.), and that said damages or injury, if any, was occasioned or incurred without the privity or knowledge of the owner, and that said petitioner desires to claim the benefit of limitation of liability as by law in such cases made and provided, and also to contest the said liability of said vessel and her

owner for any loss, damage or injury consequent upon said accident, and independently of the limitation of liability claimed under said statute;

IT IS ORDERED that a monition issue under the seal of this Court to all persons claiming damage by reason of said accident citing them and each of them to appear before this Court and make due proof of their claims on or before the 23d day of December, 1911, at 10:00 o'clock, and W. D. Totten, United States Commissioner of this Court is hereby appointed Commissioner before whom such claim shall be presented;

AND it is further ORDERED that said monition may be made by service of a copy on the attorney or attorneys or any person who may have brought suit for damages against the said vessel by and because of said accident;

AND it is further ORDERED that the said Iver Nordstrom and all and every other person or persons who have or claim to have suffered damage by reason of said accident, and each of them and their respective agents, attorneys and proctors, be restrained from prosecuting any suit now pending or any suit hereafter to be begun against the steamer or tug "ARGO" and against the Pacific Tow Boat Company.

Done in Open Court at Seattle, Washington, this 6th day of November, A. D. 1911.

(SEAL)

C. H. HANFORD,  
Judge.

DEPARTMENT OF JUSTICE  
 OFFICE OF UNITED STATES MARSHAL,  
 WESTERN DISTRICT OF WASHINGTON

RETURN OF SERVICE ON WRIT

I hereby certify and return that I served the annexed Order on Higgins, Hall and Halverstadt, attorneys of record for Iver Nordstrom, by handing to and leaving a true and correct copy thereof with Calvin S. Hall, a member of the firm of Higgins, Hall and Halverstadt at Seattle, Western District of Washington, on the 6th day of November, 1911.

JOSEPH R. H. JACOBY,  
 November 6, 1911. United States Marshal.

Fees: \$2.12. By Fred M. Lathe, Deputy.

Indorsed: Order. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 6, 1911.  
 A. W. Engle, Clerk.

TITLE OF COURT AND CAUSE.

CLAIM OF IVOR NORDSTROM.

UNITED STATES OR AMERICA,  
 WESTERN DISTRICT OF WASHINGTON, } ss.  
 NORTHERN DIVISION.

IVOR NORDSTROM, being first duly sworn,  
 on oath says:

The claim of Ivor Nordstrom against the steam-tug "Argo," now presented in response to the motion issued out of the above entitled court in the above entitled cause and in compliance therewith, yet not waiving any of the objections heretofore made in the answer of this claimant to the petition of said Pacific Tow Boat Company, a corporation, as owner of the Tug "Argo" for limitation of liability, and reserving to this claimant all exceptions and objections mentioned in said answer, is as follows:

### I.

That during all the times herein mentioned the said Pacific Tow Boat Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington, and during all of said time said petitioner was and now is engaged in the towing business in the City of Seattle and was and now is the owner and operator of the steam-tug "Argo."

### II.

That at the time claimant received the injuries hereinafter complained of he was able-bodied, twenty years of age, and capable of and actually earning to-wit: sixty (\$60.00) a month.

### III.

That on said steam-tug "Argo" on the 22nd day of November, 1910, and for several months prior

thereto, said petitioner maintained a passage-way around the engine and crank-pit for the use of and which was used by the employes of said petitioner, including the firemen working on said tug; that in order to prevent the employes using said passage-way from slipping into or being thrown into said crankpit said petitioner, for a long time to-wit: two months prior to the time claimant was injured, had constructed and all of said time and up to and including the time said claimant was injured maintained a guard of sheet iron fastened to the inside of the uprights or standards of said engine; that said guard was negligently and carelessly constructed and was dangerous and defective in that said sheet iron guard was placed on the inside instead of the outside of said standards; that the lower part of said sheet iron was not fastened to said standards so that the bottom of said guard was loose and yielding and that said sheet iron was too light, thus making it unsafe and insufficient for the purpose for which it was intended and used, and a menace to the lives and limbs of the employes so using said passage way; that said petitioner, by the exercise of reasonable care, should have known and said petitioner did know of the dangerous and defective construction and condition of said guard.

#### IV.

That from the 10th day of October, 1910, up to and including the time he received his injuries as hereinafter alleged, said claimant was employed



by said petitioner as a fireman on said Tug "Argo," and as such fireman it was his duty to oil the engine, thus making it necessary for him to use and he did use said passage way around said engine and crankpit; that at the time said claimant entered into said employment and during all of such time, up to and including the time he was injured, he was young and totally inexperienced in the use and operation of steam vessels, and particularly in the use of steam tugs; that said petitioner negligently and carelessly failed to warn this claimant of the dangerous and defective construction and condition of said guard and failed to warn said claimant of the perils and dangers incident to the use and operation of steam vessels and of the dangers attendant upon the duties of a fireman and said claimant was unaware of the same and said petitioner knew of claimant's inexperience and lack of knowledge in the use and operation of steam tugs, and the dangers attendant upon the duties of fireman.

#### V.

That on said 22nd day of November, 1910, while this claimant as fireman aforesaid was using said passage way in the oiling of said engine, said tug gave a lurch and this claimant was thrown over and against said sheet iron guard, causing his left foot to strike the bottom of said guard; that owing to such dangerous and defective construction and condition of said guard the bottom gave way, permit-

ting the foot of said claimant to extend into said crankpit and into and against the revolving cranks in said pit; that owing to such dangerous and defective construction and condition of said guard said claimant was unable to withdraw his foot from said crankpit and it was caught by said revolving cranks, so crushing and mangling claimant's said left leg that it was necessary to amputate the same just below the knee, crippling him for life and causing him great suffering and humiliation; that prior to and since said amputation said claimant has undergone several serious operations on said leg as the result of said injuries; that said claimant, on account of said injuries, has been compelled to be in a hospital nearly all of the time since said injuries were received; that on account of the shock of said amputation and the shock of said operations and the pain and suffering he has undergone claimant has been in such a weakened condition that he has been unable to perform any labor whatsoever since said accident, and that it will be a long time before claimant will be in a physical condition to do anything at all; that on account of said injuries and such operations he has suffered great pain and will continue to suffer great pain on account thereof, all to his damage in the sum of twenty-five thousand dollars (\$25,000.00).

WHEREFORE, this claimant respectfully prays:

1. That this Honorable Court will refuse to take further cognizance of this cause and that it will

deny any relief to the petitioner and will dismiss this claimant hence without day, with costs taxed in his favor.

2. That if this Honorable Court should, notwithstanding the prayer of this claimant and his respectful objection to the jurisdiction of this court, retain jurisdiction and proceed to try the same, that this Honorable Court will deny the petitioner any relief whatsoever herein, on the ground that said injuries to claimant occurred with the privity and knowledge of the petitioner and that on that account the cause be dismissed and claimant allowed to go hence without day and have his costs herein.

3. That if this Honorable Court shall deny each of the foregoing prayers, that it then proceed to determine the facts in this cause and proceed to the determination of the rights of the petitioner and the claimant in this cause, and award claimant the sum of twenty-five thousand dollars (\$25,000.00) or such sum as will fully and properly compensate him for his loss and damage, including any damage sustained by reason or loss of time, including also such sum as will fully compensate him for the pain and suffering endured by him since receiving his said injuries or that may be sustained by him in the future, and that the payment of said sum or so much thereof as shall be found to fully compensate him shall be enforced by such judgment, order or decree of this Honorable Court as shall conform to the rules and practices of courts of admiralty in

such cases made and provided, and that he may also have his costs in this behalf expended.

IVOR NORDSTROM,

Claimant.

WALTER S. FULTON,

HIGGINS, HALL & HALVERSTADT,

Proctors.

UNITED STATES OF AMERICA,

WESTERN DISTRICT OF WASHINGTON, } ss.

NORTHERN DIVISION. }

IVOR NORDSTROM, being first duly sworn on oath deposes and says: That he is the claimant mentioned in the foregoing claim; that he has read the same, knows the contents thereof and that the same is true as he verily believes.

IVOR NORDSTROM.

Subscribed and sworn to before me this 21st day of December, 1911.

CALVIN S. HALL.

Notary Public in and for the State of Washington,  
residing at Seattle.

(Notarial Seal)

Copy of within Claim received and due service of same acknowledged this 21st day of December, 1911.

BYERS & BYERS,

Proctors for Petitioner.

Indorsed: Claim of Ivor Nordstrom. Filed in U. S. District Court, Western Dist. of Washington, Dec. 23, 1911. A. W. Engle, Clerk.

## TITLE OF COURT AND CAUSE.

ANSWER OF THE RESPONDENT, IVOR  
NORDSTROM, TO THE PETITION OF  
PACIFIC TOW BOAT COMPANY.

The respondent, Ivor Nordstrom, for his answer to the petition of the Pacific Tow Boat Company, a corporation, filed herein, respectfully says:

## I.

Answering article one, this respondent admits the same.

## II.

Answering article two, respondent admits that on or about the 22nd day of November, 1910, while the said steamer "Argo" was engaged in navigating upon the navigable waters of the United States and within this district upon the waters of Puget Sound, proceeding on her voyage from Richmond Beach to Seattle, said respondent was injured upon said vessel. This respondent denies that said vessel was at that time manned and equipped in full compliance with the laws of the United States and the rules of navigation in such cases made and provided; denies that said vessel was carrying each, every and all of the lights, equipment and appliances required by the laws and rules, and denies that said vessel was fully manned in every particular and denies that said vessel was constructed in all particulars in compliance with the rules established by the laws of the United States.

## III.

Answering article three, this respondent admits that as said vessel was proceeding on said voyage, said Ivor Nordstrom, who was fireman on said boat, while engaged in his duties as fireman, was injured by his foot slipping through a guard constructed around the crank pit, and admits that his foot was crushed in said crank pit, but denies that he was injured by his own carelessness or on account of his own fault and negligence, and denies that it was not on account of any fault in the management, care, equipment, construction or control or any fault whatever of said vessel or its owner, and alleges that said injury was caused on account of the fault and negligence of said petitioner and said vessel, and was caused by reason of the defective construction and condition of said guard around said crank pit; that said guard was negligently and carelessly constructed and was dangerous and defective in that said guard was placed on the inside instead of on the outside of the standards of said engine; that the lower part of said sheet iron guard was not fastened to the said standards so that the bottom of said guard was loose and yielding, and that said sheet iron guard was too light, thus making it unsafe and insufficient for the purpose for which it was intended and used, and that it was a menace to the lives and limbs of the employes using said passage way; that said guard had been in such defective and dangerous condition for to-wit:

two months immediately prior to said accident, and its defective and dangerous condition was during all of said times known by said petitioner, but was unknown to this respondent.

#### IV.

Answering article four, respondent admits that said "Argo" at the said time had no passengers and had earned as fare or for towing on said voyage the sum of no dollars; admits that at the time of said accident said vessel was under the care and command of R. W. Wahl, Master, but respondent has no knowledge as to whether or not said R. W. Wahl, Master, was duly licensed in full compliance with the laws of the United States and the rules of navigation in such cases made and provided, and requires proof of the same; respondent denies that said vessel was fully manned and equipped.

#### V.

Answering article five, respondent has no knowledge as to the allegation that none of her owners was on the boat, and therefore requires proof of the same; respondent denies that none of her owners had knowledge of said accident or the cause thereof until after the time of its occurrence, but alleges that said petitioner and its managing agents had knowledge of the defective construction and dangerous condition of said guard as hereinbefore alleged.

## VI.

Answering article six, respondent admits that he claims that he was injured by and because of the carelessness and negligence of said petitioner in not properly constructing said vessel and in not furnishing him a safe and proper place to perform his duties, and admits that he has brought suit against said petitioner as owner and operator of said boat, in the sum of twenty-five thousand dollars (\$25,000.00), in the Superior Court of the State of Washington for King County, for damages by and because of said accident, and admits that said suit is now pending, but denies that the value of said steamer "Argo" does not exceed the sum of five thousand dollars (\$5,000.00). Respondent alleges that said steamer "Argo" at said time was of the value of fourteen thousand dollars (\$14,000.00).

## VII.

Answering article seven, this respondent denies that petitioner has a valid and meritorious defense to the claim of this respondent; denies that said accident was without the fault of said petitioner or of said vessel. Respondent has no knowledge as to the allegation that said guard was the same as at the time the said vessel was constructed, and therefore requires proof of the same; respondent denies that said guard was approved by the officers and inspectors of the United States, and denies that the same had been approved and passed by said in-



spectors at each annual inspection since the construction of said vessel.

### VIII.

Answering article eight, respondent denies that said petitioner has a right to claim the benefit of limitation of liability according to the American law in practice and the laws of the United States in such cases made and provided, and in manner and form as prescribed by the rules and practices in matters of maritime nature.

### IX.

Answering article nine, respondent denies that said accident occurred without the design, negligence, privity or knowledge of said petitioner, denies that all and singular the premises contained in said petition are true, and denies that the same is within the admiralty and maritime jurisdiction of this court; respondent alleges that said accident occurred by reason of the negligence of said petitioner, and alleges that it occurred with the privity and knowledge of said petitioner.

And further answering the said petition, respondent respectfully shows unto the court as follows:

### I.

That during all the times herein mentioned said petitioner, Pacific Tow Boat Company, was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington,

and during all of said times was and now is engaged in the towing business in the City of Seattle, and was and now is the owner and operator of the steam tug "Argo."

## II.

That at the time he was injured as hereinafter alleged, respondent was able-bodied, twenty years of age and capable of and actually earning, to-wit: sixty dollars (\$60.00) a month.

## III.

That on said steam tug "Argo," on the 22nd day of November, 1910, and for a long time prior thereto, said petitioner maintained a passage way around the engine and crank pit for the use of, and which was used by the employes of said petitioner, including the firemen working on said tug; that in order to prevent the employes from using said passage way from slipping into or being thrown into said crank pit, said petitioner for a long time, to-wit: two months prior to the time said respondent was injured, had constructed, and all of said times and up to and including the time said respondent was injured, maintained a guard of sheet iron fastened to the inside of the uprights or standards of said engine; that said guard was negligently and carelessly constructed and was dangerous and defective in that said sheet iron guard was placed on the inside instead of on the outside of said standards; that the lower part of said sheet iron guard was not

fastened to the said standards so that the bottom of said guard was loose and yielding, and that said sheet iron was too light, thus making it unsafe and insufficient for the purpose for which it was intended and used, and it was a menace to the lives and limbs of said employes so using said passage way; that said petitioner, by the exercise of reasonable care should have known and said petitioner, including its managing agent and officers, did know of the dangerous and defective construction and condition of said guard.

#### IV.

That from the tenth day of October, 1910, up to and including the time he received his injuries as hereinafter alleged, this respondent was employed by said petitioner as a fireman on said tug "Argo," and as such fireman it was his duty to oil the engine, thus making it necessary for him to use, and he did use said passage way around said engine and crank pit; that at the time said respondent entered said employment, and during all of said times up to and including the time he was injured, he was young and totally inexperienced in the use and operation of steam vessels, and particularly in the use of steam tugs, all of which said petitioner knew; that said petitioner and its managing agents and each of them, negligently and carelessly failed to warn said respondent of the dangerous and defective construction and condition of said guard, and failed to warn said respondent of the perils and dangers incident

to the use and operation of steam vessels, and of the dangers attendant upon the duties of fireman, and said respondent was unaware of the same.

## V.

That on, to-wit: the 22nd day of November, 1910, while this respondent as fireman aforesaid was using said passage way in the oiling of said engine, said tug gave a lurch and this respondent was thrown over and against said sheet iron guard, causing his left foot to strike the bottom of said guard, that owing to the said dangerous and defective construction and condition of said guard, the bottom gave way, permitting the foot of this respondent to extend into said crank pit, and into and against the revolving cranks in said pit; that owing to said dangerous and defective construction and condition of said guard, this respondent was unable to withdraw his foot from said crank pit, and it was caught by said revolving cranks, so crushing and mangling respondent's left leg that it was necessary to amputate the same, and it was amputated just below the knee, crippling him for life and causing him great suffering and humiliation; that prior to and since said amputation, this respondent has undergone several serious operations on said leg as the result of said injuries, and has suffered and will continue to suffer great pain on account thereof; that his earning capacity has been greatly and seriously impaired, all to his damage in the sum of twenty-five thousand dollars (\$25,000.00).

WHEREFORE, this respondent respectfully prays:

1. That this Honorable Court will refuse to take further cognizance of this cause and that it will deny any relief to the petitioner and will dismiss this respondent hence without day, with costs taxed in his favor.

2. That if this Honorable Court should, notwithstanding the prayer of this respondent and his respectful objection to the jurisdiction of this court, retain jurisdiction and proceed to try the same, that this Honorable Court will deny the petitioner any relief whatsoever herein, on the ground that said injuries to respondent occurred with the privacy of the petitioner, and that on that account the cause be dismissed and respondent allowed to go hence without day and have his costs herein.

3. That if this Honorable Court shall deny each of the foregoing prayers, that it then proceed to determine the facts in this cause and proceed to the determination of the rights of the petitioner and the respondent in this cause, and award him such a sum as will fully and properly compensate him for his loss and damage, including any damage sustained by reason of loss of time, including also such sum as will fully compensate him for pain and suffering endured by him since receiving his said injuries, or that may be sustained by him in the future, and that the payment of said sum, or so much thereof as shall be found to fully compensate him, shall be enforced by such judgment, order or

decree of this Honorable Court as shall conform to the rules and practices of courts of admiralty in such cases made and provided, and that he may also have his costs in this behalf expended, together with such other and further or different relief as seems proper.

IVOR NORDSTROM,  
Respondent.

WALTER S. FULTON,  
HIGGINS, HALL, HALVERSTADT,  
Proctors for Respondent.

UNITED STATES OF AMERICA,  
WESTERN DISTRICT OF WASHINGTON, } ss.  
NORTHERN DIVISION.

IVOR NORDSTROM, being first duly sworn on oath says: That I am the respondent named in the foregoing answer: that I have read the same, know the contents thereof and the same is wholly true as I verily believe.

IVOR NORDSTROM.

Subscribed and sworn to before me this 14th day of December, 1911.

CALVIN S. HALL.

Notary Public in and for the State of Washington,  
residing at Seattle.

Notarial Seal.

Copy of within Answer received and due service

of same acknowledged this 21st day of December, 1911.

BYERS & BYERS,  
Proctors for Petitioner.

Indorsed: Answer of the Respondent, Ivor Nordstrom, to the Petition of the Pacific Tow Boat Company. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 23, 1911. A. W. Engle, Clerk.

## TITLE OF COURT AND CAUSE.

### STIPULATION.

It is hereby stipulated by and between the libellant and petitioner herein, the Pacific Tow Boat Company, and the claimant and respondent herein, Iver Nordstrom, by their proctors Byers & Byers for the petitioner and libellant, and Walter S. Fulton and Higgins, Hall & Halverstadt for the claimant and respondent, that the exceptions heretofore filed by the claimant

#### I.

“Excepting to the valuation of the said vessel or tug as fixed by the appraisers heretofore appointed by the Court as too low and wholly disproportionate to the value of said boat” and;

#### II.

“Because the said appraisal was not fairly made and that said appraisers were not sufficiently in-

formed as to the value to make a just and fair appraisal of the tug "Argo," may be overruled and denied, but in lieu of a re-appraisal, the petitioner and libellant and the claimant and respondent hereby agree and stipulate that if the claim of the said claimant shall be allowed in any other or greater sum than the sum of Five Thousand Dollars (\$5000.), for which a bond has heretofore been filed by the petitioner, then that the said petitioner will thereupon either at said time, file in the said court an additional bond in the sum of Three Thousand Dollars (\$3000.) or pay toward the liquidation of said claim a sufficient amount to liquidate the same in excess of the said Five Thousand Dollar (\$5000.) bond, up to the sum of Eight Thousand Dollars (\$8000.), or surrender the said boat to the said court, it being the intent of this stipulation that the petitioner's liability shall be limited to the sum of Eight Thousand Dollars (\$8000.) instead of the sum of Five Thousand Dollars (\$5000.).

It is hereby agreed and understood that this stipulation shall not be held in any manner to effect the proceedings in limitation of liability herein, otherwise than as expressly provided herein.

BYERS & BYERS.

Proctors for Libellant and Petitioner.

WALTER S. FULTON,

HIGGINS, HALL & HALVERSTADT,

Proctors for claimant and respondent.

Service of the within Stip. by delivery of a copy



to the undersigned is hereby acknowledged this 29th day of Dec., 1911.

HIGGINS, HALL & HALVERSTADT.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Jan. 2, 1912, A. W. Engle, Clerk.

COMMISSIONER'S REPORT.

To the HONORABLE CLINTON W. HOWARD,  
Judge of the Above Entitled Court:

This matter coming on for hearing this 25th day of January, 1912, the Petitioner appeared by Alpheus A. Byers, Esq., of the firm of Byers & Byers, its Proctors, and the Claimant appeared by Calvin S. Hall, Esq., of the firm of Higgins, Hall and Halverstadt, and Walter S. Fulton, his Proctors; thereupon the following proceedings were had, and testimony taken:

INDEX.

Witnesses for

Claimant	Direct	Cross	Re-D	Re-C
Frank C. Brownfield....	2	6	15	17
W. R. Chesley.....	21	27	37	39
Dr. F. R. Underwood....	40	42	..	..
Iver Nordstrom .....	43	49	54	55
Thos. F. Ossinger.....	56	58	..	..
John S. Wright.....	66	68	74	76

## Witnesses for

Petitioner	Direct	Cross	Re-D	Re-C
A. L. McNealy.....	77	79	88	90
R. W. Wahl.....	92	95	..	..
H. S. Studdert.....	107	110	118	121
Howard B. Lovejoy....	130	131	137	138
Howard B. Lovejoy (re- called) .....	149	..	..	..
H. Ramwell .....	140	141	148	160
Jno. L. Anderson.....	150	152	159	..
Iver Nordstrom .....	163	..	..	175
James F. Primrose.....	165	167	175	..

Owing to the fact that the testimony taken before me was taken in shorthand by different stenographers, it became necessary to number in red ink all pages after the first 55, being consecutively, Nos. 56 to 179, both inclusive, which comprise the entire report of the testimony and proceedings taken before me.

WM. D. TOTTEN, Commr.

FRANK C. BROWNFIELD, produced as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. HALL:

Q What is your name?

A Brownfield, Frank C.

Q And where do you live, Mr. Brownfield?

A 307 6th Avenue North, City.

Q What is your business?

A Marine engineer.

Q By whom are you now employed?

A The Humboldt Steamship Company.

Q What position do you occupy now?

A Third Assistant Engineer on the Steamer Humboldt.

Q Where were you employed the 22nd day of November, 1910?

A On the tug 'Argo', Pacific Tow Boat Company.

Q How long had you been employed there?

A From the 5th of October.

Q 1910?

A Yes.

Q What was your position on the boat?

A Second engineer.

Q Who was chief engineer?

A Jensen.

Q Are you acquainted with the Claimant Iver Nordstrom?

A Yes, sir.

Q How long had you known him,—were you acquainted with him on the 22nd day of November, 1910?

A Yes, sir.

Q How long had you known him at that time?

A Why, I had known him as long as he was on the boat,—I don't know when he came on the boat.

Q Do you remember his being injured on that day,—the 22nd day of November, 1910?

A Yes, sir.

Q Will you describe the position and condition of what is known as the crank pit?

WITNESS: (Interrupting)—The position and condition of it as it was on that boat,—on the 'Argo'?

MR. HALL: (Continuing)—during the time you were employed there?

A The position of it,—it is just a pit, an encasement that the cranks revolve in that is set down about 2 or 3 inches lower than the floor.

Q And what was in that crank pit?

A What was in it?

Q Yes?

A The cranks revolved in that pit.

Q What was on either side of the crank pit,—was there a passageway?

A There were 2 crank pits,—one for the high press crank and one for the low,—and then there is the front of the engine, is where the fire room is located, and there is a floor there, and at the back, just aft of the engine there was a floor over the shaft,—you could walk around there, too.

Q State whether or not there was a passage way for the employes or people on the boat on either side of the crank pit?

A On either side of the crank pit?

Q Yes?

A The particular crank pit that he was caught in?

Q Yes.

A No; there is no passage way on one side of it.

Q There was a passage way on the other side of it, though?

A Yes, on the other side of the engine.

Q Was there a shield or guard around, separating this passageway from the crank pit?

A On the open side of the engine, yes—in fact, there was a guard on both sides.

Q Well, of what was that guard constructed?

A About 16th sheet iron.

Q And what was it fastened to?

A Fastened to?

Q Yes?

A It was bolted to the top with “U” bolts, bolted on the columns.

Q Was it fastened at the bottom?

A No, sir.

Q Was it on the inside or outside of the columns?

A On the inside of the columns.

Q You mean by that, the inside toward the revolving cranks?

A Yes, sir.

Q How long had it been in that condition?

A As long as I had been aboard.

Q When did you first learn that Mr. Nordstrom was injured?

A About a couple of minutes after it happened.

Q Who told you about it?

A Why, the Captain sung out to me.

Q What did he say?

A He just said "Come on up, the fireman's hurt," or something like that.

Q What did you do then?

A I heard him hollering, and as soon as he sung out to me, why, I got right out and went back to the engine room, and saw him lying there.

Q Well, what did you see when you went up there?

A Iver was lying out on the grating.

Q Did he seem to be in pain?

A Yes, you bet he did.

Q What was his condition as to being injured at that time from what you saw?

A Well, I did not—there was no profuse hemorrhage—I did—

Q Well, what had happened to him?

A His foot was badly torn up and bruised, and looked—it was bleeding bad—and his leg, too; it was all torn (illustrating)—oh, from about 4 inches below his knee down.

Q How long have you been working on boats?

A Off and on since 1902.

Q Have you been employed on different tugs?

A Yes, sir.

Q And in what capacity?

A Fireman, engineer, chief and second engineer.

Q Did your employment make you familiar with the construction of different tugs?

A In regards to anything around the engine room, yes.

Q You say this crank pit was lower than the floor?

A It was, yes, a little.

Q It was lower?

A Yes.

Q Do you remember how many cranks were in that pit?

A There is only one crank in each pit.

Q One in each pit?

A Yes, sir.

Q And was there just one pit guarded by this guard?

A The whole front of the engine was guarded—I mean the open face of the engine.

Q Well, how many pits?

A Two.

Q From your experience and your employment on boats and tugs, is it usual for crank pits such as was on this boat, to be guarded?

A Yes, sir.

Q You stated a little while ago that the lower part of this guard was not fastened to the column?

A No, it was not.

Q Was that noticeable except upon quite a careful examination?

MR. BYERS: I object, because it calls for a conclusion of a witness and is not asking for any fact, and is also objectionable as being a leading question.

WITNESS: Shall I answer?

THE COMMISSIONER: Answer the question.

A The average person would not have noticed it; in fact, the average engineer would not.

MR. HALL: I think that is all.

### CROSS EXAMINATION.

BY MR. BYERS:

Q How old are you?

A 26 years.

Q 26 years old. You began work on boats in 1902?

A Yes, sir.

Q That is 10 years ago?

A Yes.

Q Then you began working when you were 16 years of age?

A Yes, sir.

Q What boat did you work on in 1910?

A On the "Clifford Sifton."

Q What was the next boat you worked on?

A On the "Eureka."

Q What was you doing on the "Eureka"?

A Oiling.

Q What was the next boat?

A The "Minnetonka."

Q The "Minnetonka"—and then where did you work?

A Well, for three years I was in the hospital for the Army.



Q Then three years is to be taken from these ten years that you have spoken of before?

A Yes.

Q And when you came out of the Army what did you do?

A Went back to steamboating.

Q Where did you work?

A Went to work on the "Stimson."

Q What year was that?

A 1907.

Q How long did you work there?

A I don't remember now.

Q In what capacity?

A Fireman.

Q Fireman?

A Yes, sir.

Q Then where did you go from the "Stimson"?

A On the "George T."

Q That was with this same fleet as the "Argo," was it?

A Yes, sir.

Q How long did you work on the "George T."?

A Well—oh—

Q How long did you work on that—

A I don't know.

Q Well, approximately?

A About a year.

Q In what capacity?

A Fireman.

Q That takes you down to 1909, does it—you

were fireman until 1909? Now, where did you go from the "George T."?

A From the "George T." to the "Doctor."

Q That is with this same fleet, the Pacific Tow Boat Company?

A She belonged to the International Contract Company.

Q What did you do there?

A Fireman.

Q When did you get your license as engineer?

A 23rd August, 1910.

Q Now, as a matter of fact, then, you have only been an engineer from the 23rd of August, 1910—or not two years yet. That constitutes your experience as an engineer?

A Yes.

Q Now, this engine that you speak of—that was an ordinary 4 1-2 compound engine?

A Yes, sir.

Q It was set in the hold of the boat in an ordinary way?

A Yes, sir.

Q The boiler was set about how far forward?

A I don't remember.

Q Well, it was 6 or 8 feet?

A Yes. That does not make any difference, anyway.

Q Well, answer the questions. There was a passageway between the boiler and the crank pit of the engine—a passageway around the engine on the starboard side?

A Yes.

Q And then there was a passageway around back of the engine shaft, there being a floor laid over the shaft?

A Yes, sir.

Q It is usual in the ordinary way that engine and fire rooms in this class of boat are constructed, as far as you know?

A Well, boats of that size, yes.

Q Now, you say you were present on this evening when Iver Nordstrom was hurt, and were present on the trip?

A Yes.

Q Yes. What kind of weather was it that trip?

A Pretty heavy weather.

Q Blowing?

A Yes.

Q This vessel, the "Argo," is a small vessel, isn't she—you would call her a small vessel—nothing like the "Eureka" or "Humboldt"?

A No.

Q And, of course, she rolled quite a good deal in the swell?

A She was making heavy weather of it.

Q This man Nordstrom was fireman?

A Yes.

Q And you were second engineer?

A Yes.

Q A fireman's duty is to work around the engine, is it?

A Part of his duties.

Q Part of his duties, yes. Did he do any of the oiling?

A Yes.

Q Anyone, even though not a fireman, could see, could he not, on that boat, and would know if he got his foot into the crank pit that he would get hurt?

MR. HALL: I object to the question as not proper cross-examination, and calling for a conclusion of the witness.

A Why—

Q These cranks were in plain view, were they—as a matter of fact?

A Yes, as plain as any other part of the engine.

Q And about at what rate were they revolving?

A About 120.

Q Then that crank shaft would be going through there at 240 times a minute, would it?

A Going around about 120 times a minute, you mean.

Q And there were two crank shafts, were there?

A No, just one.

Q There were two cranks to this engine—one to the high pressure and one to the low, and each of these cranks were passing through there—the pit—at the rate of 120 times a minute?

A Yes.

Q Now, these cranks were traveling through there so rapidly, weren't they, so that anyone would know, and especially one who was a fireman, that if he got his foot into that pit that he could not ex-

tricate it in time to help it from being torn off or being very badly injured?

A *Certainly not.*

Q And that was perfectly apparent, wasn't it?

A Yes, sir.

Q Now, you say that Mr. Nordstrom had been working there as fireman for how long—I don't believe I remember?

A Neither do I.

MR. BYERS: You stated, did you not, before—

MR. HALL: Answer the question.

Q How long, approximately, had he been working there at the time of the accident—to the best of your knowledge?

A I don't remember—a couple of weeks—I could not say.

Q Well, would you say it was less than six weeks?

A Oh, yes; less than six weeks.

Q You are very sure about that, are you?

A Yes.

Q Well, now, was it less than a month?

A I would not say.

Q Yes. Then during this night in this heavy weather that you have spoken of, were you present in the fire room?

A No, sir.

Q Did you see the accident?

A No, sir.

Q You don't know how the accident occurred?

A No, sir.

Q You had been working on this "Argo" for how many months or years, or what length of time?

A Since the 5th of October, that year.

Q And during all of that time, this guard, or what you call a guard, was in exactly the same condition as it was the night when he was hurt?

A Yes, sir.

Q As a matter of fact, this boat had been inspected during that time, had she not?

A During which time?

Q During the time you worked on her?

A She was inspected while I was on her.

Q And she had been inspected prior to the time you were on her?

A Yes, I suppose so.

Q And, as far as you know, this guard was in the same condition at the time of her prior inspections, and at the time of the injury, as it was and had been ever since the boat was built?

A As far as I know—yes.

Q Now, as a matter of fact, Mr. Brownfield, this guard that you speak of, is primarily intended to keep the oil from splashing out of the crank pit, isn't it?

A Oh, they do that—they keep the oil from spluttering out, all right.

MR. BYERS: Well, now, you didn't answer my question, did you?

THE COMMISSIONER: I must caution the

witness to confine himself to answering counsel's questions.

MR. HALL: That is right.

A I would put them there for protection.

Q You would—but do you know what they are put there for?

A The principal thing they are put there for is protection.

Q Are you acquainted with guards on other vessels on the Sound in the same class as this?

A Yes, sir.

Q Now, do you know of other vessels on the Sound that had their—have their guards in just the same way that this vessel had this so-called guard at the time of this accident?

A No.

Q You don't?

A No.

Q How many vessels of the kind and class of this vessel have you inspected?

A I never inspected any of them.

Q Then you would not be very likely to know that this was an unusual way to keep these guards or not, would you?

A Any of the boats that I have ever been on or seen, of that type, have their guards rigged up different from that.

Q What boats have you ever seen that have their guards rigged up differently—that is, of this type of vessel?

A I don't know now.

Q Well, did you ever know of any vessel that you can name that was of this type or character, that had her guards or splash pans rigged up differently from these?

A Yes.

Q What one is it?

A Well, I tell you I don't know as you will find any of them rigged up with their guards rigged the way that one was rigged, inside the columns.

Q Do you know that you won't?

A I have a pretty good idea.

Q We are not wanting ideas—we want facts—we are asking, do you recollect?

A On most boats that I have been with they always had rigs that were bolted to the outside columns, or made fast.

Q What boats of that type have you been on that had their splash pans bolted to the outside of the columns?

A That boat I was on in Juneau.

Q Well, let's confine ourselves to the fleet around Seattle here, if possible.

A There was one.

Q Well, now, if it was not for these pans or guards as you call them, the oil from these crank pits would fly all over the boat, wouldn't it—fly out on each side?

A Yes, sir.

Q These pans are put up to keep that oil from flying?

A That's one of the things.



Q One of the things. Now, they are also put up to keep the oil from running out on the deck or flooring on each side of the crank pit—that's the idea, is it not?

A That is one of the ideas.

Q Now, if you would fasten these splash pans on the outside of the columns, would not the oil fly against the inside of the pan, running down there and run on the outside of the engine frame?

A Sure, it would; it does.

Q Then, if it was put on the outside of the columns, it would not serve the purpose for which it is intended, would it?

A As far as the oil—no.

Q That is, on a good many types of engines?

A No.

Q Now, these engines and engine frames are differently made for these different engines and splash pan—every one must be slightly modified to act as a splash pan for another, in order to effect its purpose?

A Certainly.

MR. BYERS: That's all.

#### RE-DIRECT EXAMINATION.

BY MR. HALL:

Q When was this boat inspected, if you know?

MR. BYERS: Objected to, as the record of the United States office is the best evidence.

A I don't know.

Q Was it before or after the accident?

A Oh, you mean the inspection of that year?

Q Yes.

A It was after the accident.

Q How long after the accident?

A Just a few days.

Q Do you know approximately the date?

A No, sir.

Q Was it a week, or two weeks?

A Well, the date that the inspector—no, I could not tell you that date.

Q Well, you know it was inspected after the accident?

A Yes.

Q Was the guard in the same condition at that time as it was at the time of the accident?

A No, sir.

Q Did you know of any prior inspection of that boat, of your own knowledge?

A No, sir.

Q Do you know of any splash pans, as Mr. Byers described them, being put on the inside of the columns and not fastened at the bottom?

MR. BYERS: I submit that is objectionable, as he said that he did not know of any that were fastened on the inside, of any character.

A No, I never saw any fastened inside of the columns.

Q What purpose did you suppose that guard served, when you were working on the boat?

MR. BYERS: Objected to as improper, calling exclusively for a conclusion of the witness.

A Why, it served as a guard, so that you would not stick your foot in there; and it also served, as he says, to keep the oil from splashing out.

Q How high was this guard?

A About a foot and a half, or something like that.

Q How wide was it?

A It extended along in front of the two crank pits, about, I guess, about four feet.

Q Now, you say you never inspected any other crank pits. Did you mean by that you had not seen other crank pits?

A No.

Q Did you mean by that, that you had not seen other guards?

A No.

Q What did you mean by that?

A I merely meant that I had never made it a business of—never employed in the business of inspecting other crank pits. I have inspected every crank pit of every boat I was ever on.

Q From your experience, would you say that it was necessary for the protection of the employees of the boat to have a guard there?

MR. BYERS: I object to the question because it is not only calling for the conclusion of the witness, but for a conclusion of law, which he is doubly disqualified to make.

A Why, certainly.

Q For what purpose?

A Why, to keep them from getting their feet caught, and getting hurt.

MR. HALL: That's all.

### RE-CROSS EXAMINATION.

BY MR. BYERS:

Q You gave the height of this guard as about 18 inches?

A As near as I can remember.

Q You mean above the engine frame?

A No, I gave it as the width of the sheet iron piece.

Q Now, that width stood up on the engine frame, did it, on the bed?

A Yes.

Q Then how deep is that frame or bed, as you call it?

A How deep?

Q Yes.

A Six inches.

Q That engine frame sets on the engine bed; the engine bed is built into the boat upon timbers, isn't it?

A The engine bed is the cast iron bed.

Q The metal of this engine bed is how thick?

Q The metal—oh, about 1 1-4 inches.

Q About 1 1-4 inches?

A Yes, sir—they are cast hollow.

Q I want you to tell how far about the foot of the columns these so-called guards reached. Do you

understand what I am trying to get? How far was it from the engine bed down to the floor?

A To the floor that you walk on?

Q Yes?

A The bed was below the floor.

Q You are certain of that, are you?

A Yes. In front—

Q Now, this engine bed is set on what?

A Set on timber.

Q Set on timber?

A Yes.

Q And, as a matter of fact, that engine bed is a frame of iron which stands up about six inches?

A Yes.

Q Now, do you mean to say that flooring is six inches thick?

A The flooring there was about inch planks.

Q Then, as a matter of fact, the top of the engine bed would be about up five inches above the flooring?

A No.

Q Then, you mean to state that the flooring on the side, starboard side of the engine, was raised up on false work on 2x4's, so as to bring it up higher than the rest of the engine bed?

A Yes, it was that way. There is hardly any boats that way, rigged exactly with the floors above the beds that way; they are mostly flush right with the beds or a little below the beds—that is, boats of that size. Of course, some of these smaller ones the crank pits are down in the bilge.

Q These engine beds are all constructed slightly different in the different boats, to suit the peculiar build or style of the boat?

A Yes, hardly any two of them alike.

Q Mr. Nordstrom was a fireman, and was a fireman all the time that he was there?

A Yes, sir.

Q And, consequently, working around this engine, his duties kept him in the engine room all the time he was on duty?

A Yes, and the firing room, which was all one.

Q All one—and are a room of approximately—of what size?

A I don't know. I could take a rule down and measure.

MR. HALL: State approximately.

Q Just approximately. I am not asking you for exact figures, I just want as near as you can estimate it.

A Well, the room, with the space that is taken up by the engine, the plant, boilers, engine and everything, is on that boat about 12 feet wide and—oh—about 30 feet long—somewheres about that.

Q But the room from the after end of the boiler to the aft end of the engine was probably about 10x12, isn't it, approximately?

A Yes, about. Well, I guess a little longer.

Q And this guard is, as a mater of fact, considerably longer than you estimated it. It is nearer 7 feet than 4, lengthwise of the pan, is it not—that is, the length of it? You estimated it about 4 feet.

A Oh, you mean of this sheet. It has been quite a while since I have been there. I cannot. Oh, I guess about as long as this table.

MR. HALL: Well, about how long—we cannot have the table there—about how long, approximately?

A I don't remember—put it down 4 feet, because I don't remember. Gee whiz! A man's got a memory—

Q Now, these columns to the engine don't go straight down, or perpendicular, do they?

A No, sir.

Q They don't?

A No, sir.

Q About what angle do they go from the cylinders down to the engine bed? Perhaps to make that clearer, if they were absolutely—

A I know what you mean.

MR. BYERS: I was trying to get it so it would appear in the record as plain as possible. How long are the columns in the first place?

A They are about five feet.

Q Five feet? Now, how much did they average from the perpendicular?

A They would be about 10 degrees.

Q How? In the revolutions of the cranks at their extreme limit—how far?

A That low press column on her, I think, was perpendicular—no, it was not, either—I am getting that mixed up with some other boats.

Q Now, the question is this: The cranks in revolving came approximately how far from the columns, that is if the column was placed immediately opposite the crank, how far would the crank come from hitting it as it revolved?

A On her, she runs pretty close to the column.

Q On her, she runs pretty close to the column?

A Yes, sir.

Q And now you say that this guard was fastened only at the top?

A Yes, sir.

MR. BYERS: That's all.

(Witness excused.)

W. R. CHESLEY, produced as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

Feb. 27, 1912.

#### DIRECT EXAMINATION.

BY MR. FULTON:

Q What is your name?

A W. R. Chesley.

Q What is your business, Mr. Chesley?

A Tug boat business.

Q Were you formerly connected with the Pacific Tow Boat Company?

A Yes, sir.

Q In what capacity?

A Manager.



Q Were you, and are you still a stockholder in this corporation?

A I am—not exactly in the Pacific Tow Boat Company; in the Chesley Tow Boat Company, who has an interest in the Pacific Tow Boat Company.

Q And you are the principal owner of the Chesley Tow Boat Company?

A Not the principal owner, only one of them.

Q Are you acquainted with the tug “Argo”?

A Yes.

Q That is owned by the Pacific Tow Boat Company, is it?

A Yes, sir.

Q And was built by them?

A Built by the Chesley Tow Boat Company.

Q By them?

A Yes, sir.

Q Was that built under your supervision?

A Yes—that is, I had her built.

Q Did you supervise the construction of this boat?

A No, not exactly; I had men to do that.

Q Yes, and you were in charge of the construction of that boat?

A Yes.

Q You are familiar with the manner in which this boat was constructed, are you, Mr. Chesley?

A Well, in a general way.

Q Yes; and you are familiar with the plan of the boat?

A Yes, in a general way only, however.

Q And after the boat was completed you were upon her many times, were you?

A Yes.

Q And observed her?

A Yes, sir.

Q Do you know what there was in the way of a passageway around the engines and crank pit?

A Well, I know that there was a passageway there, yes, sir.

Q What was this used for?

A Well, for going past the engine, to attend to any of the machinery which was abaft of the engine.

Q Used by the employees?

A Yes.

Q And this would include the fireman, would it?

A Yes.

Q Working on the tug?

A Working on the tug.

Q Now, do you know what there was constructed or maintained upon this passageway, if anything, in the way of a guard for the protection of employees or persons using it?

A You mean in regard to the engine?

Q Yes?

A I know there was a guard put up there.

Q That was?

A At the time she was built.

Q For what purpose?

A To protect persons from falling into the machinery and crank pit.

Q Crank pit?

A Yes, from stepping in.

Q Now, what knowledge have you of the installation of this guard?

A As to the detail, none, any more than to have seen that it was there.

Q As to any part of it, what knowledge have you?

A Nothing more than to see this guard of iron along there.

Q What, if any, directions did you give for placing a guard there?

A I gave directions for the people constructing the boat to have something put there.

Q What was the necessity for having any guard there?

MR. BYERS: We object to this as it calls for a conclusion of the witness and it has not been shown that the witness possesses any qualifications or any knowledge whatever with respect to machinery and he has not been qualified as an expert witness.

MR. FULTON: Just answer the question, Mr. Chesley.

WITNESS: What was the question?

Q What was the necessity, if any, for having this guard?

A To prevent someone from falling into the machinery or crank pit.

Q Without a guard there, Mr. Chesley, what, if any, danger was there of persons using that passage-way of falling into this crank pit?

MR. BYERS: Same objections, for the same reasons.

A The reasons why I gave instructions to put one there was that a man possibly might slip in there, and I like to make it as safe as possible around engines.

Q What was necessary, in your opinion, to make that passageway reasonably safe for persons or employees using it?

A Well, something alongside of the engine there.

Q This guard?

A Yes, a guard.

Q Well, the guard was necessary—

A Well, I—

Q In your judgment?

A I consider it would be safer to have one there.

Q Yes; without a guard, what danger was there, if any, of persons slipping and falling into the crank pit?

A There was danger of it.

Q Yes; Mr. Chesley, you are familiar with boats, are you—tow boats?

A Somewhat.

Q And their construction?

A Somewhat.

Q And you have been engaged in that business how many years?

A Fifteen or eighteen years.

Q In the tow boat business?

A Yes, sir.

Q And during that time you have had occasion to operate boats?

A Yes, sir.

Q And to be upon them?

A Yes, sir.

Q And become familiar with their construction and their different parts?

A In a general way.

Q And you worked upon them and operated them?

A I have been upon them when they were operating them.

Q Yes; and at the present time you are engaged in the tow boat business?

A Yes, sir.

Q Now, after giving directions that a guard be placed upon this passageway, what, if anything, did you do towards seeing that it was placed there?

A Nothing any more than that I saw one there.

Q You saw one there? Did you make an examination of it?

A I did not.

Q And you saw that that guard was there before the boat was pressed into service?

A About that time.

Q Yes; and you made no examination to ascertain the manner in which it was placed?

A No, sir.

Q Or to see whether it was securely placed or not?

A No, sir.

Q You simply assume that it was securely fastened?

A Yes, sir.

Q That was how long previous to the 22nd of November, 1910, Mr. Chesley?

A Well, it must have been about four years, I should think. I think the boat is about four years old.

Q This guard was constructed of sheet iron, fastened to the inside of the uprights or standards of the engine?

MR. BYERS: We object to that because it is a leading question.

Q You don't know how the guard you speak of was fastened?

A No, sir.

Q Nor do you know what it consisted of?

A Not any more than a piece of iron.

Q Now, do you know—you say you do not know the manner in which it was fastened to the standards?

A No, sir.

Q Whether it was loose or whether it was secure—you don't know?

A I don't know.

Q Mr. Chesley, assuming that this guard was not fastened, that the bottom of it was not fastened, so that it was loose and would yield—what protection would it afford—

MR. BYERS: Just a moment—

Q (Continued) —to persons walking upon the passageway?

MR. BYERS: We object to that question because it is calling for a conclusion of the witness as an expert, and expert qualifications have not been shown.

MR. FULTON: Just answer the question. Assuming that the bottom of the guard was loose and that it would yield, what protection would it afford to persons upon the passageway or using the passageway?

A It would afford some protection, possibly not as much as it would if it was fastened at the bottom.

Q What would there be to prevent a person from stepping into the crank pit, or a person's foot going into the crank pit?

A If he should place his foot in a certain way there, it might possibly go through to the bottom.

Q Would you consider a guard that was left loose at the bottom so that it would yield, and not fastened at the bottom, a protection to persons going upon that passageway?

MR. BYERS: We object to that question for the reason that it calls for a conclusion of the witness.

A It would be some protection.

Q Do you consider it an adequate protection?

A I would consider it more of a protection if it were fastened at the bottom.

Q If the guard along that passageway was left loose at the bottom so that it would yield, what

would there be to protect one from being thrown into the crank pit?

A It would be the top of the guard that would prevent the person from going into the crank pit. They might possibly put their foot through at the bottom.

Q Yes; with the boat lurching and swaying because of rough weather, what liability would there be of one's foot going into the guard and into the crank pit because of the guard's loose, unfastened condition at the bottom?

A There would be a liability of that accident happening, if they should step or slip near the bottom of the guard.

MR. FULTON: I think that is all.

#### CROSS-EXAMINATION.

BY MR. BYERS:

Q Mr. Chesley, you are not an engineer, are you?

A No, sir.

Q You have never constructed an engine or operated one?

A No, sir.

Q You are not a master or licensed master of a vessel?

A No, sir.

Q You have never operated or commanded a vessel?

A No, sir.

Q You were the manager of the Pacific Tow Boat Company?



A Yes.

Q Some little friction arose with regard to your management, didn't there?

A Yes, sir.

Q And you are more or less unfriendly to the Company, since you ceased to be manager?

A No, not necessarily.

Q Not necessarily—but is that a fact?

A No, sir.

Q Is it not a fact?

A No, sir.

Q You are still friendly to the company?

A I don't quite understand how you mean that. I have no business with them because I was put out from there.

Q Well, do you entertain any hostile feeling or enmity or ill-will towards the company on account of that?

A No, sir.

Q Then you do feel as friendly as ever to the company?

A Yes, so far as the company is concerned.

Q So far as the company is concerned. Then, Mr. Chesley, you had a talk with Mr. Fulton about your testimony before you came in; you volunteered to tell him what you knew about the boat?

A No, sir.

Q But yet you did tell him, didn't you, all you could about this?

A I answered his questions that he asked me.

Q And you volunteered to come here and testify?

A He asked me if I would come.

Q Well, you volunteered to do it?

A Yes, if that is volunteering.

Q Now, you say that this boat was built under your instruction about four or five years ago?

A Yes, sir.

Q And this guard was put up?

A A guard—I did not say *this* one. I do not know what guard is there now.

Q You do not know whether it was the same one that was put up at the time you put it there or not?

A No, I don't.

Q How long did you continue to manage the vessel after its construction?

A In the neighborhood of three years.

Q Was it the same guard that was put up at the time of the construction of the vessel that was there at the time you ceased to be manager?

A So far as I know. I could not say positively.

Q What is your best judgment of that?

A I think it was.

Q What is also your best judgment as to the fact of whether it was the same one or not, at the time of the accident?

A I don't know.

Q Was the one that was put up at the time the vessel was constructed, fastened at the bottom and top, both?

A I don't know that.

Q As a matter of fact, Mr. Chesley, this guard

that in this boat is constructed of sheet iron, is in a great many boats made of canvas, isn't it?

A I never knew one to be.

Q Well, you have been on quite a number of tug boats, and you know what kind of an engine a 1-A fore and aft compound engine is. Did you never see this so-called guard on a fore and aft compound constructed of a piece of canvas that went from the standards of the engine?

A Not to my knowledge.

Q Now, then, what is contained in this crank pit?

A It is the main shaft and connecting rod principally.

Q The connecting rod is the rod that leads from the piston to the crank shaft?

A Yes.

Q Now, that connecting rod is fastened to the crank shaft, how?

A Usually by a strip going around the crank shaft, and coming up and the connecting rod is bolted to it.

Q Then that leaves a projection on one side of the crank shaft?

A Yes.

Q And on the other side of that projection what is there?

A On the opposite side of the crank shaft?

Q Opposite to this fastening which you have described, what is there on the other side of the crank shaft?

A Well, I would not think there would be anything opposite to that fastening. Sometimes there is a balance on the opposite side.

Q Now, this counter-balance and what you say is the fastening between the connecting rod and the crank shaft, make practically two large spokes that revolve in the crank pit?

A As it balances on one side and the offset in the shaft would be opposite to it.

Q Yes; now this revolves in that crank pit?

A Yes, sir.

Q Now, how rapidly did this engine turn it when it was going at full speed?

A I presume at 110 to 130 revolutions.

Q So that in that crank pit it is how wide fore and aft of the boat?

A Fore and aft of the boat?

Q How wide is each crank pit?

A I should judge possibly 24 inches or such a matter.

Q Yes; now, in that crank pit there is revolving a crank shaft with its projection and the counter-balance on the other side so it makes a heavy mass of iron turning in that crank pit twice the number of the strokes of the engine?

A Yes.

Q So it will be revolving when it is going, say, full speed at the rate of 240 to 260 revolutions a minute?

A Possibly. I am not versed in those things.

Q Then the connecting rod and this counter-

balance and the crank shaft are all in plain view of one working about the engine?

A Yes.

Q And are revolving about the rates at which you describe?

A Yes.

Q Is it not plain to anyone that if his foot or any portion of his body gets in there it will be crushed?

A Yes, sir.

Q Now, as far as you know, Mr. Chesley, this so-called guard was still the same at the time of the accident as it was when the boat was built? So far as you know?

A Yes.

Q And this boat has been inspected at each annual inspection by the inspectors of hulls and boilers?

A Yes.

Q At least one a year?

A Yes, sir.

Q It was also inspected as complying with the rules of the United States for the governing of steam vessels, immediately after the time it was launched?

MR. FULTON: Objected to on the ground that it is inconsistent, and immaterial whether it was inspected or whether it was not.

A Yes, sir.

Q You know, as a matter of fact, that it was inspected?

A Yes.

Q And you know that it passed inspection?

MR. HALL: I object on the ground that it is wholly immaterial whether or not it was inspected.

Q As to the mechanical operation of the boats, you did not interfere very much with them, did you?

A No, sir.

Q The management of this was left to the engineer and fireman?

A Yes, sir.

Q The fireman in his duties—you know his duties, don't you, Mr. Chesley?

A Somewhat; yes, sir.

Q Well, it would be his duty to work around this engine, wouldn't it?

A Yes, sir.

Q To oil the bearings?

A Yes, sir.

Q And keep the fires going and in general to assist the engineer?

A Yes, sir.

Q So he would be constantly working around this engine?

A He would.

Q And consequently he would know as much or more about it than you would?

MR. FULTON: I object upon the ground that it is not proper cross-examination and upon the ground that it is incompetent, irrelevant and immaterial and calls for a conclusion of the witness.

MR. BYERS: Now, you may answer Mr. Chesley.

A About the detail of the engine.

Q In the bottom of this crank pit what collects, if anything, do you know?

A Water and oil.

Q Grease and dirt?

A Yes.

Q Now, this crank shaft and counter-balance revolving in that crank pit frequently strikes that water and oil?

A Yes.

Q And consequently has a tendency to throw that in a stream around the boat?

A Yes, sir, somewhat.

Q Now, this guard that you have put up there, is it not for the purpose of keeping that oil from being smeared on the sides of the boat?

A I ordered one put up there for the safety of the people.

Q Is it not for that purpose?

A Put up for the purpose of making it safe there.

Q Now, do you say it is not put up for the purpose of keeping the oil from being thrown on the sides of the boat? Is it or is it not?

A Not for that purpose.

Q Was not put up for that purpose at all?

A No.

Q And that is not the purpose for which this is constructed in other boats as well as this one?

A It might be in some boats.

Q Would not this boat with engine of this type throw that oil just as much as any boat, probably?

A Probably.

Q Then did you not intend to have anything to keep it from splashing over the boat?

A Lots of engines don't have it around there; this engine I ordered it around for safety.

Q Then what did you have constructed in this boat to prevent that oil from being splashed over the boat?

A Nothing.

Q Nothing?

A Nothing at all.

Q You intended to just let it splash?

A That was not taken into consideration.

Q Not at all?

A Yes.

Q Now, because you did not take it into consideration, do you know whether it was taken into consideration at all or not?

A I do not.

Q This boat and its engine are constructed and installed practically the same as all other boats of that type?

A Yes, practically the same.

Q And isn't this splash pan or guard placed in there practically the same as in all other boats of her type?

A No; each engine might be constructed a little different to that.



Q I am not alluding to just a little difference. I say practically the same as other boats of her type?

A I don't know as to that.

Q You don't know as to that? Don't you know that all other boats or practically all other boats of the type of this one have a splash pan constructed in practically the same manner as this so-called "Guard" in this boat, to keep oil from being splashed over the engine room?

A No.

Q Can you tell me any other boats of the type of this one that don't have splash pans or guards constructed to keep the oil from flying over the room?

A Yes.

A Just name one?

A We have the "Tempest."

Q She has a fore and aft compound engine?

A Yes.

Q And does not have anything to keep the oil from flying over the room?

A It may.

Q There would not be oil all around there if a pan of this character was constructed to keep it from flying around there?

A There would not be as much.

Q Would there be any, as a matter of fact?

A Yes, I think so.

Q You think so?

A Yes.

Q All other boats of this character have a passage way around the engine, to go to the rear of it, don't they?

A Usually, yes.

Q Well, as a matter of fact, they have to haven't they?

A Yes, sir.

Q And it is practically the same as the passage-way around this engine?

A In small boats it is not always as clear as this one is.

Q Not always as clear?

A Small boats might have larger ones.

Q The smaller the boat of course the smaller the passageway?

A Yes, sir.

Q You are now, Mr. Chesley, running a business, boat business in opposition to the Pacific Tow Boat Company, aren't you?

A I don't know whether you would call it in opposition or not.

Q Another tow boat business?

A Yes, another tow boat business.

Q And you have been ever since you ceased to be connected with this company?

A Yes, sir.

Q On your cross-examination you stated once that you did not feel enmity 'to the company as such' I think were your words?

A Yes.

Q What did you mean by that?

A That I had no ill-feeling against the company itself. I presume that you were drawing out that I had some enmity so that I would testify to their disadvantage or try to.

Q Well, I surmised that when you say that you had no enmity toward the company itself that you had enmity toward someone else.

A I might have some ill feeling toward the people who put me out.

Q Yes; the people, are the present manager of the Company?

A Yes, sir.

MR. BYERS: That is all.

#### RE-DIRECT EXAMINATION.

BY MR. FULTON:

Q Mr. Chesley, the fact that you may feel unkindly towards certain persons whom you consider as responsible for your being put out of the Pacific Tow Boat Company does that have any influence or effect upon the evidence that you are giving in this case?

A No, sir.

Q Your Company, you say, the Chesley Tow Boat Company owns stock in the Pacific Tow Boat Company?

A Yes, sir.

Q How much?

A They own 80,000 par value.

Q What is the capitalization of the company?

A \$125,000.00.

Q And the Chesley Tow Boat company owns how much?

A \$80,000.00.

Q Now you refer to having been put out of the Pacific Tow Boat Company,—who put you out?

A You mean—

Q How did they do that?

A Voted me out of the management.

Q That is, others got control of the company and they voted you out of the management?

A Yes, sir.

Q Previously to that time you had been manager and director of the company?

A Yes, sir.

Q Now, Mr. Byers asked you if you did not voluntarily seek to testify in this case,—you were seen by me, were you not, at your office down at Pier,—what—Grand Trunk Dock?

A Grand Trunk Dock, yes sir.

Q And I came there and asked you concerning the facts that you have testified to in this case?

A Yes, sir.

Q Did you volunteer to testify?

A No, sir.

Q Was that the first intimation that you had had that you would be called upon to testify?

A Yes, sir.

Q When you saw me there at the dock, and when I questioned you concerning this case?

A Yes, sir.

Q And you came here because you were notified

by Messrs. Higgings, Hall and Halverstadt and myself that this afternoon had been fixed for the taking of your evidence before Judge Totten?

A Yes, sir.

Q That is why you are here?

A Yes, sir.

MR. FULTON: That is all.

#### RE-CROSS-EXAMINATION

BY MR. BYERS:

Q You gave them to understand or made them believe that you came here as a friendly witness, however?

A No more than to speak what I knew about it.

Q But from what you did speak to them you gave them to understand that you were a friendly witness?

MR. FULTON: I object on the ground that that is not proper re-cross-examination.

A No sir, no more friendly than towards the other side.

Q No more friendly to the petitioner than libellant?

A No, sir.

MR. BYERS: That is all, Mr. Chesley.

#### RE-RE-DIRECT EXAMINATION.

BY MR. FULTON:

Q You are simply trying to tell the truth, Mr. Chesley, as you understand it?

A Yes, sir.

MR. FULTON: That's all.

(Witness excused).

DR. F. R. UNDERWOOD, produced as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. HALL:

Q You may state your name?

A F. R. Underwood.

Q What is your profession?

A Physician.

Q Where are you engaged in the practise of your profession?

A In the Leary Building.

Q Seattle?

A Seattle.

Q Do you know the claimant, Iver Nordstrom?

A I do.

Q You attended him, did you not?

A I did.

Q When did you commence attending Iver Nordstrom?

A November, 1910.

Q Where?

A Providence Hospital.

Q What condition was he then in, Doctor?

A His leg below the knee was smashed and torn,—the bones of the leg broken and the bones of the foot broken; suffering a great deal of pain.

Q Was an attempt made to save the leg?

A Yes.

Q What did you do to save it?

A Why, we tried to save it,—as much of the leg as possible,—possibly all of it, and it was thoroughly cleansed and dressed, drains placed in the torn places, the bones placed in position, the whole surrounded by temporary splints, and daily dressings made thereafter.

Q Were these daily dressing such that they gave Mr. Nordstrom pain?

A A great deal; very painful.

Q How long did that continue, Doctor, to the best of your recollection?

A We amputated the leg in February, 1911, and previous to that time he was on the operating table probably two or three times for the purpose of opening up the pockets of pus that had formed in the leg. After the amputation of the leg there were other drains to be placed in the stump, and it even affected the meat so that he was on the operating table possibly four or five times.

Q What would you say as to his suffering pain all during this time?

A He suffered a great deal of pain. He bore it very bravely, but on every occasion of the dressing there was quite a great deal of pain as it was necessary to raise the leg, and the calf tissues were honey-combed with this pus and dead tissue so that, altogether, he was quite a sufferer.

Q Do you remember how long he stayed in the hospital after the operations?

A He was discharged in June, 1911.

Q And the operation took place in February, 1911?

A Yes, sir.

Q Are you the regular U. S. Marine Doctor here?

A I have been connected with the marine service here for seven years.

Q And you treated him because he was a sailor?

A Yes.

Q Which leg was it, Doctor, that was—

A His left leg.

Q And where was it amputated?

A It was amputated at the joining of the upper and middle third of the left leg.

Q Where would that be with reference to the knee? How far below?

A Why, about 6 inches I should judge, below the knee.

MR. HALL: That is all.

#### CROSS-EXAMINATION.

BY MR. BYERS:

Q The knee was not injured,—that is, it is not injured now?

A No.

MR. BYERS: That is all.



## RE-DIRECT EXAMINATION.

BY MR. HALL:

Q But it was infected,—the knee?

A Yes, the tissues.

Q You have received full remuneration for your services?

A The Government paid me.

Q And paid the hospital bill, I understand?

A Yes.

MR. HALL: That is all.

(Witness excused.)

IVOR NORDSTROM, the Claimant herein, being first duly sworn, testified in his own behalf as follows:

## DIRECT EXAMINATION.

BY MR. HALL:

Q Your name is Iver Nordstrom?

A Yes.

Q You are the claimant herein?

A Yes.

Q What is your age?

A Twenty-one years.

Q When were you twenty-one years old?

A 29th of September, 1911.

Q Where were you working November 22nd, 1910?

A On the 'Argo.'

Q Who was the owner of the 'Argo?'

A The Pacific Tow Boat Company.

Q How long had you been working there?

A From the 15th of October to the 22nd of November.

Q 1910?

A Yes.

Q When you were employed there, what were you doing?

A I was employed as fireman.

Q But what were you doing?

A I was firing and oiling.

Q What experience had you before in firing?

A Well, I had been in saw mills and on donkeys.

Q Were you ever employed on a boat before as fireman?

A Never. Just on the tug.

Q Well, had you ever worked on a boat before as fireman or oiler?

A Never.

Q You were injured November 22nd, 1910?

A Yes.

Q State what you were doing at the time you were injured?

A Well, I was oiling the parts of the machinery and the boat was rolling quite a bit, and I slip with my left leg against the lower part of the guard and it gave away and let my foot go into the crank pit.

Q What happened to your foot then?

A Well, it got mixed up with machinery and got crushed.

Q What caused it to be crushed?

A The crank.

Q The crank hit it?

A Yes.

Q Did you make an effort to pull your leg out of there?

A Yes, I tried.

Q What, if anything, prevented you from doing it?

A The guard cut into my foot when I pulled; it held it in there.

Q The guard held your foot in there?

A Yes.

Q How did you finally get it out?

A When I called for 'stop' and they stopped the engine I kicked with my right foot against the guard and pulled it out.

Q When you pulled it out, what was its condition?

A Well, it was all smashed up.

Q When your foot was injured, what effect did the revolving cranks have on it, that is, as to pulling it further in?

A Yes, they pulled it down underneath the cranks.

Q It did?

A Yes.

Q If the guard had not caught your foot and held it, could you have pulled your foot out?

A I think so.

Q Where were you taken then, Iver?

A I was taken to Seattle then and up to the Providence Hospital.

Q How long were you in the hospital?

A I was in the Providence one hundred and ninety-nine days and in Port Townsend thirty days.

Q Do you remember when your leg was amputated,—about what time?

A Not exactly. About I think eight and a half weeks after I came into the hospital.

Q Did you suffer pain during this time?

A All the time.

Q Was,—how was it,—severe pain?

A They were hurting bad.

Q Were you delirious on account of it?

A No, but my fever was high.

Q Were you able to sleep at night?

A Very little.

Q Then as I understand you, you were suffering pain all the time there?

A Yes.

Q What was done to your leg from time to time?

A Well, they done a couple of operations and then they dressed it every day.

Q Did it hurt you while they dressed it?

A Awful.

Q After the leg was amputated, were there any operations performed?

A Yes.

Q What was done to it?

A Some skin was put underneath of the knee and the end of the bone was trimmed over a bit.

Q Did those operations cause you pain?

A Yes.

Q Have you been able to do anything toward working since then?

A No; not at all.

Q Has it been necessary for you to use crutches to walk?

A Yes.

Q Do you still use them?

A Yes.

Q How has your general health been since then?

A Well the leg has not been feeling very well and I have been feeling sick and weak.

Q Do you still suffer pain from the leg?

A Well, sometimes it hurts a little.

Q Before this accident were you able-bodied, I mean by that, were you crippled at all?

A Not at all.

Q What was your condition as to health?

A I never was sick before I had this accident.

Q How much were you earning a month?

A Forty dollars and board.

Q Forty dollars and board. Did you ever earn more money than that?

A Yes.

Q Where?

A In a saw mill.

Q What were you getting there?

A I could make pretty near \$80. per month, but I had to board me there.

Q You made \$80. and you had to pay your board out of that?

A Yes.

Q Where were you born—?

A In Sweden.

Q How long have you been in this country?

A Two years and seven months.

Q Now?

A Yes.

Q You had been here how long when you were hurt?

A I had been here 1 year and 4 months, something like that.

Q Where were you when you got hurt,—I mean, where was the boat that you were on?

A The boat was about close to Edmonds.

Q On what trip was it,—where was it coming from and going?

A We had come over there to get some gravel scows, a little place close to Edmonds—

MR. BYERS (Interrupting) He means Richmond Beach.

A (Continued) Richmond Beach, yes, and was returning to Seattle.

Q And you were hurt on the return trip?

A Yes.

Q What was the condition of the weather?

A It was very heavy weather.

Q Was the boat rolling?

A Yes.

Q Was it rough?

A Yes.

Q What time did this accident happen?

A About ten o'clock in the evening.

Q Ten o'clock in the evening?

A Yes.

Q How did that guard give way?

A Well, when I fell against it, it gave away on the bottom like a door giving away, going open.

Q When you fell against it?

A Yes.

Q It gave way at the bottom?

A Yes.

Q Was it fastened at the bottom?

A I don't know, but I don't think so. It gave way.

Q It gave way as though it was not fastened at the bottom?

A Yes.

Q Did the top give way?

A No.

Q The top was still fastened?

A Yes.

Q And the bottom gave way?

A Yes.

Q Do you remember seeing the guard at that time after you were injured, while you were lying there or trying to get out, could you see whether it was fastened at the bottom?

A No, I could not see anything, I was in too bad condition,—I did not know where I was hardly.

Q Where you kicked against it with the other foot to get your left leg out, was it fastened at the bottom or not?

A I could see that I could press it enough in, for to get my foot out.

Q That is; you could press the bottom of the guard in toward the crank pit so as to release your other leg?

A Yes.

MR. HALL: That is all.

### CROSS-EXAMINATION.

BY MR. BYERS:

Q Iver, when you went there to get work from the Pacific Tow Boat Company you made application for a job as fireman, didn't you?

A Yes.

Q You told them you could fire a boat, did you?

A No.

Q You didn't?

A No.

A Well, how did you expect to get a job as fireman if you could not fire a boat?

A They asked me—"can you fire" and I said "yes, I think I can."

Q And you said you had worked before that time on deck?

A Yes.

Q How long did you work on deck?

A I worked one month on the Columbia River and then I worked about a couple of months around Seattle here.

Q On what boat did you work at Seattle here?

A The freight boat Dredger, and the Fidalgo.



Q Those boats belong to the Star Steamship Co.?

A I don't know.

Q You worked on the deck there?

A Yes.

Q Now, you went and hired to the Pacific Tow Boat Company as fireman?

A Yes.

Q And that was about the 15th day of October?

A Yes.

Q Now, as fireman, you went down into the engine room immediately?

A Yes.

Q And your duties kept you in this engine room all the time?

A Yes, on my watch.

Q Yes; and you were oiling the engine?

A Yes.

Q That was part of your work?

A Yes.

Q And you had been oiling this engine at the time of the accident for about six weeks from the 15th of October?

A Five weeks, something like that.

Q In doing that oiling you would necessarily lean over or be against this plate which you call a guard every day?

A Yes, I was standing close to it.

Q Your duties called you all around it, before it and around it and on both sides of it?

A Not on both sides, only one side.

Q You would go around on the port side of the engine sometimes?

A Very seldom.

Q Wouldn't you go around there to see the circulator, etc.?

A Just for a moment sometimes.

Q So you were working in close proximity or close to that place where you were hurt, during all those 5 weeks or better?

A Yes.

Q If there was anything wrong with that guard you would have noticed it?

A No, I might not.

Q Why couldn't you see it?

A Well, if the guard was not alright, it looked alright to me.

Q The guard was alright looking to you?

A Yes.

Q And you could see it all the time. It is in plain view, there is nothing to hide it, is there?

A Well it is a little below the floor, and inside of the column and it's a little dark down there, too.

Q And you knew that it was inside the column all the time?

A I could see it was.

Q Now, you worked on the Dredger and Fidalgo here, on deck. What was the name of the boat on the Columbia River?

A I don't remember.

Q That was a steamboat, was it?

A Yes, a speed boat.

Q Did the Dredger and Fidalgo both have fore and aft compound engines just the same as this?

A I don't think so.

Q You don't think so; what saw-mills did you work in?

A One mill at,—in Falls City.

Q What were you doing there?

A I was working in the night time.

A What were your duties?

A I had to keep the steam up for the dry kiln.

Q Working around the boilers as fireman?

A Yes.

Q And you had worked on donkey engines?

A Yes.

Q How long did you work in this saw mill?

A I worked there about one and a half months anyway.

Q About one and a half months anyway,—and then how long did you work on this donkey engine?

A Three or four months.

Q Then practically all the time, Iver, since you came to this country, you had been working around engines and boats, that is, practically all the time?

A Most of the time.

Q Now, Iver, you know about how fast that piston moves up and down there in that crank pit?

A Not exactly.

Q Well, does it move very fast or slow?

A Well, pretty fast.

Q Yes; pretty fast. Now, as a matter of fact, Iver, you could not stick your hand in that crank pit

and draw it out and not have it struck when that vessel is going at full speed?

A No, I don't think so.

Q Now, the crank shaft with the fastenings and the counterbalance runs so fast that it just looks about like one solid piece, doesn't it, to the eye,—one solid piece?

A I don't know just exactly how it looks, but—

Q Well, Iver, if you had stuck your foot in there whether there was a guard or whether there was not, it would have torn your foot off?

A Yes.

Q And it wouldn't make any difference whether there was a guard there or not, that would have happened?

A Well, if there had not been a guard there and I had fallen in there, I would have been caught altogether.

Q You say that vessel was rolling pretty heavy that night?

A It was.

Q Was it more than just an ordinary storm?

A More than there was ever when I was on board.

Q Yes; and it was in a lurch of the vessel that you fell in?

A Yes, my foot.

Q And you would not have fallen if it had not been for that lurch?

A I don't know.

Q Did you fall down?

A No, I just slipped.

Q What did you work at in the old country, Iver?

A Well, I was on the farm most of the time.

Q Did you ever work in saw mills or around engines or anything of that kind in the old country?

A No.

Q You are now in your twenty-second year?

A Yes.

Q Your leg, aside from the fact that it is crippled, your leg is pretty well recovered, isn't it?

A What do you mean?

Q I mean that, for instance, your leg is so that you can have an artificial leg put on and you can use it quite a good deal.

A Not yet.

Q After a while?

A Well, I was at the leg maker and he told me I would never be good.

Q The leg maker told you that?

A Yes.

Q The Doctor says it will be good?

A No; I tried to wear an artificial leg but it broke up so soon.

Q I believe that is all.

#### RE-DIRECT EXAMINATION.

BY MR. HALL:

Q Iver, now if it had not been for this guard catching hold of your leg, could you have gotten

your foot out of there without being so badly crushed?

MR. BYERS: I object to that as leading, suggestive, and calling for a conclusion of the witness, and not tending to elicit the facts.

MR. HALL: State what effect the guard holding your leg had on your foot being smashed?

MR. BYERS: Objected to because it assumes a condition contrary to the facts.

MR. HALL: Answer that.

A I think I could have got my foot out.

Q You think you could have gotten it out without its being so badly crushed?

A I think so.

Q Did your duties,—how much of your time, while you were on duty, did your work take up there?

A Well, all the time, where we were running.

Q That is, while you were on duty?

A Yes.

Q If you were not firing you were oiling?

A Yes.

Q And did that keep you busy all the time?

A Yes, it did.

#### RE-CROSS EXAMINATION.

Q And the principal parts of your oiling was right around this crank shaft and pistons?

A Yes, around the moving parts.

Q And those are the moving parts?

A Yes.

MR. BYERS: That is all.

RE RE-DIRECT EXAMINATION.

BY MR. HALL:

Q Was there anything to call your attention to the fact that the guard was not fastened at the bottom?

MR. BYERS: I object and move to strike.

Q Did you know that this guard was not fastened at the bottom?

A I did not.

Q Did you know that it would have given away if your foot went against it?

A No, I didn't.

MR. HALL: That is all.

(Witness excused)

THOMAS F. OSSINGER, produced as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. FULTON:

Q State your name.

A Thomas F. Ossinger.

Q What is your business?

A Engineer.

Q What experience have you had in around the Sound here on boats?

A On the Sound? I have been on the Sound ten years.

Q Have you been on all sorts of boats?

A All kinds.

Q Are you familiar with the Argo, the tug Argo?

A Familiar with that class of boats.

Q What license, if any, do you hold?

A License? Chief Engineer's marine license.

Q How long have you held that Chief Engineer's license?

A Two years.

Q You say you have been employed for the past ten years on the Sound on boats?

A Yes, sir.

Q In what capacity?

A Everywhere from junior engineer to chief engineer.

Q Assuming that in the tug "Argo" there is a crank pit, the bottom or bed of which is about two inches lower than the platform or deck, is any—and that there are in this crank pit two columns, one of high pressure and one of low pressure, and to one side of said crank pit for the use of employees in getting around the pit, there is a passage way, and on that same side there are three columns, state whether or not—what in your opinion, if anything, should there be there to protect the employees and keep them from falling into the pit?

A There should be a guard between the col-



umns, between the center column and each end column. There would be two crank pits instead of one.

Q There should be a guard in front of each pit?

A Yes.

Q How should that be constructed in your opinion? What should it consist of?

A Why a light cast iron—light sheet iron about one-sixteenth of an inch thick.

Q Fastened where, Mr. Ossinger?

A If I were putting it in, I would fasten it to the bed plate on the bottom, the top would be fastened to the columns.

Q On what side of the column should it be placed?

A On the outside, of course.

Q That is the side away from the crank pit?

A Yes sir.

Q Have you worked on tugs similar to the Argo?

A No, not tugs, I have worked on small boats.

Q You are familiar with this same class of construction and have worked on vessels of the style of construction?

A Yes sir.

Q What, if anything, is customary to have to protect employees from falling into the pit?

A It is customary to have a guard similar to one I have just described, that guards the face of the engine.

Q Why is that necessary?

A Why is it necessary?

Q Yes, why is it?

A Well an engineer or oiler in course of his work is called on to get close to the machinery, and on any kind of a run one has to get in near it and also to oil the journals in the center of the pit, and if the boat is rocking and no guard there, a man would be in pretty hard shape.

Q What would be the danger there?

A Danger of getting into the crank pit.

Q Mr. Ossinger, assuming that there was a guard in front of the low pressure crank, and that guard was made of sheet iron about one-sixteenth of an inch thick, and that was fastened on the inside to the columns, through the columns at the top but not at the bottom, what—would that, in your opinion, be a proper guard?

A No, sir, it would not be any guard.

#### CROSS EXAMINATION.

BY MR. BYERS:

Q You say you have been working for about ten years—

A Longer than that on the Sound; ten years out of Seattle.

Q What boat are you employed on now?

A None.

Q Last employed on?

A Chippewa, Inland Navigation Company.

Q When was that?

A About a year and a half ago.

Q Where since that time?

A Pacific Coast Condensed Milk Company.

Q Pacific Coast Condensed Milk Company?

A Yes, sir.

Q You haven't been marine engineer for them?

A Stationary.

Q What was your position on the Chippewa?

A First assistant.

Q You were not chief on her?

A No.

Q How long?

A About two months.

Q For what reason did you quit there?

A Why did I quit?

Q Yes, sir.

A I don't know as that has any bearing on this case, but the ship was laid up.

Q The ship laid up? Where were you employed before that?

A

Q How long, about?

A About a year.

Q What was your license, for what size vessel?

A Chief engineer of Sound.

Q What tonnage?

A 750.

Q Not over?

A No.

Q Now, I want to know what vessel of the type of the Argo you have ever worked upon?

A The Inland Flyer.

Q The Inland Flyer, well, take the Inland Flyer, that is the Mohawk now, isn't it? Is there a guard

on her for the purpose of keeping or protecting the employees from falling into the crank pit?

A There was at the time I was on her.

Q You are sure of that?

A I am.

Q Don't you know, as a matter of fact, that there isn't and never was a guard on her such as you have described?

A I did not say there was one such as I described.

Q Do you know of one such as you have described on the Inland Flyer or the Mohawk?

A I did not say there was one such as I described.

Q Don't you know, as a matter of fact, that there is one for the purpose of keeping oil from being splashed by the revolving cranks?

A No sir.

Q You don't? Now, what other vessels of the type of the Argo have you ever worked on?

A I don't know that I worked on any quite as small as the Argo. I have been on the boats of the Inland Navigation Company, the Flyer, Chippewa, Indianapolis, Iroquois—

Q Taking the Flyer, is there any guard on her, or ever has been on her, purposed or intended to keep any man from falling into the crank pit?

A Yes, sir, there is a hand rail.

Q I am not speaking of hand rails, I am speaking of guards such as we have been talking about. Now, is there such a guard on the Flyer?

A Not that kind of a guard, because there is a different kind of an engine; her bed plate is above the floor.

Q Did you ever see the bed plate in the Argo?

A No.

Q Now is there any vessel you know of on the Sound at the present time of the type of the Argo, or of approximately the type of the Argo that has guards such as you have described that is constructed for the purpose of preventing the employees from falling into the crank pit?

A I can not name any boat that is built in exactly that way, but they all have some kind of guard to keep a man from falling into the crank pit.

Q That is your statement unqualified?

A That is my statement.

Q You are willing to rest on that statement that they all have some kind of a guard?

A Yes, sir. The crank pit is not left open for a man to walk into.

Q Then you do not think that the columns or the bed plate or the steps to the casing in the cylinder form any guard at all?

A The cylinder on any kind of a boat is way above the bed, how can a man fall in there?

Q Now, as a matter of fact, in this particular boat that we are discussing, the cylinders are probably only not over forty-eight inches above the bed plate?

A About four feet.

Q Yes, less than four feet; three columns ex-

tend from the cylinder case to the bed plate. You don't think that would form any protection?

A Not any, not in that way.

Q Can you name any vessel of the size and type of the Argo at present running upon the Sound that has any other than these things that I have named to keep a man from getting his feet into the crank pit?

A No; I can't name—I can't name any particular one, not being familiar with the small tow boats.

Q Would you be willing to state there is one on the Sound?

A Yes, I don't think I would have any trouble in finding one.

Q But you can not name one?

A No.

Q You said you would fasten the bottom of this guard to the bed plate?

A Yes, sir.

Q I suppose you would have it rivetted?

A Fasten it with bolts, so you can take it off.

Q As a matter of fact it is necessary to take it off quite frequently?

A Yes, sir.

Q In some boats, such as the Monticello and the Florence K. they have the so-called guard just set or leaned against the columns, do they not?

A On the outside?

Q Sometimes on the outside, sometimes on the inside.

A I can't understand how they could lean it against the inside.

Q Sometimes have it leaned against the outside—

A Without fastening it at all? I have never seen that.

Q You have never seen that? When did you last examine the Mohawk?

A About sometime between one and a half and two years ago.

Q Did you notice how those guards were fastened at that time?

A There were hand rails about the bottom platform.

Q Is there any necessity in a man who is acquainted with the working of an engine where it is a small engine of the kind, getting his feet in the crank pit—

BY MR. FULTON: We object to that as incompetent cross-examination, and upon the further ground that it calls for the conclusion of witness upon a question that the Court must determine.

BY MR. BYERS:

Q —familiar with an engine; working around it; such as I have described, a small engine, against the top of which he can rest his hands—

A Why, a man coming alongside of an engine with the boat running in heavy sea would be apt to lose his balance and his feet slip in. It is possible for it to happen.

Q Did you ever hear of it happening in your experience?

A Not exactly in that way.

Q Did you ever hear of these pans—splash pans, and which you call guards, being put up there for the purpose of keeping the oil from splashing over the boat?

A Why, to a certain extent it would keep the oil from splashing over the boat.

Q Isn't that what it is intended to do?

A It would act as an oil splash to a certain extent.

Q Now, will you answer my question?

(Question read) Isn't that what it is intended to do?

A That is what I say, it would answer that purpose—

Q Is that the intention in putting it there?

A Yes, it is there as a guard, and would answer that purpose.

Q Isn't it there to keep the oil from getting thrown over the boat?

A You can turn it around, and put it that way, yes.

Q Now, sometimes it is made of canvas and tied with a string.

A I have never used any of that kind.

Q Your experience on boats has been quite limited, hasn't it?

A I don't think so.

Q You have never seen this splash pan, or guard as you call it, made of canvas?

A No sir.



Q You have never seen it where it was just set against the columns and not fastened in any way only with a little clamp—a tin clamp that just clamped over the column?

A O, clamp? Yes.

Q You have seen it that way? A little tin clamp—

A Tin clamp, or iron or steel clamp—

Q It was the thickness of tin.

A Heavier than tin.

Q But you have seen them where they have been set there without anything to hold them up?

A No sir, never.

Q If one were made of canvas, it would scarcely act as a guard, would it?

A I wouldn't suppose it would.

Q So that if one was placed there and made of canvas then its purpose or intention must be something less than to act as a guard, you would think so wouldn't you?

A I should suppose so, yes.

Q And if it only was set there and leaned against the columns, its purpose would be to act as something less than a guard, wouldn't it?

A With nothing holding it at all?

Q Nothing except gravity.

A That would be impossible for it to stand up there unless the ship was lying absolutely still.

Q And if only fastened by means of a clamp, just stuck there, that would necessarily be intended for something else than a guard?

A If that was put on the outside and clamped on the columns, that would be practically permanent if it was made heavy enough.

Q And if one was fastened at the top of the columns with U bolts and on the inside and on the bottom rested against the engine frame or bed, that would be intended as a splash pan and not as a guard, wouldn't it?

A It would not be safe as a guard, it might possibly be put up as a splash pan.

Q It would not be intended for a guard, would it?

A I wouldn't suppose any one would put up a guard that way.

Q You are working now for the Pacific Coast Condensed Milk Company?

A No, I am not working at all.

Q You are not employed at all?

A No.

JOHN S. WRIGHT, Produced as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

BY MR. HALL:

Q State your name.

A John S. Wright.

Q What is your business?

A Marine Engineer.

Q How long have you been marine engineer?

A I have held a license about twelve years, I think it is, 1900.

Q What sort of license do you hold?

A First assistant unlimited ocean; chief engineer lake, bay and sound vessels of 750 gross tons.

Q What sort of boats have you been employed on, Mr. Wright?

A Various kinds.

Q Are you familiar with the tug Argo?

A I am not.

Q Do you know the class of vessel that is admitted in?

A Why, from what I have heard—

BY MR. BYERS: We object to witness testifying to what he has heard.

BY MR. HALL:

Q Have you ever been employed on tugs on the Sound here?

A I have.

Q The Argo is a tug about 85 or 90 feet long and about—and of about 130 tons capacity, and had a beam of approximately 18 feet; the engine and boilers are forward, and there is a cylinder pit aft in which there is a high pressure crank and a low pressure crank; there is a passage way around the crank pit for the use of the employees in working around the pit; the top of the pit itself is about two inches lower than the floor of the deck; are you familiar with that class of boats, such as I have described?

A To a certain extent, yes sir.

Q Assuming that the crank pit is as I have described, and that there is a passage way in front of

it for the use of employees, what, if anything—and at the—and the bottom of the crank pit is two or three inches lower than the floor of the deck of this passage way, what, if anything, in your opinion, is necessary to have there to protect the employees and keep them from falling in or being thrown into the crank pit?

A The boats that I have been chief engineer on had guards or a shield made out of sheet iron about one-sixteenth of an inch thick.

BY MR. BYERS:

I object to the answer and move to strike it.

Q BY MR. HALL:

What in your opinion is necessary to have there to protect the employees of the boat using this passage way from being thrown into or falling into the crank pit, what is necessary?

A There should be a guard there.

Q In your opinion based on your experience, how should that guard be constructed?

A Out of material—either a pipe running across fastened to the columns longitudinally, or material made out of sheet iron one-sixteenth of an inch thick.

Q And how fastened?

A By a spring yoke rivetted into the sheet iron fastened to the column both top and bottom.

Q On which side of the column?

A On the outside of the column.

Q That is the side toward the passage way?

A Yes sir.

Q Based on your experience, you may state whether or not it is customary to have such guards?

A It is.

Q In your opinion, would a guard constructed—guard consisting of sheet iron about one-sixteenth of an inch thick fastened at the top to the columns on the inside, but not fastened at the bottom; is that a proper guard—is such a guard as I have described a proper guard.

A It is not.

Q For what reasons? Why is it not a proper guard, Mr. Wright?

A For the reason it is not fastened at the bottom.

Q Not being fastened at the bottom, what is liable to happen to the employees using the passage way?

A In case there should be any oil on the floor to make it slippery, one would be liable to slip into the pit, or if the boat were rolling, one would be liable to slip in also.

Q Is it customary on this class of vessels and other vessels of larger size to have guards in front of the crank pits?

A It is.

Q That is all.

#### CROSS EXAMINATION.

BY MR. BYERS:

Q Did you talk your testimony over with Mr. Hall before you came in here?

A Very little of it.

Q You told him how you would testify as to such questions as you have answered?

A Yes sir.

Q And he propounded this series of questions to you?

A Some of them.

Q And your purpose in coming here was to testify that such an equipment as the Argo had was not a proper equipment?

A Yes sir.

Q Although you had never seen the equipment the Argo had, and know nothing about it?

A Only what I had been told.

Q Now, what boat of the type of the Argo had you ever been employed upon?

A Steamer Major Guy Howard belonging to the United States Government at Astoria, Oregon, was one.

Q What is she, a tug boat?

A She is used for tug and passengers.

Q Used for tug and passengers? Used for tow boat same as any?

A Yes sir.

Q I am asking you what vessels of the type of the Argo—Is the Major Guy Howard of the type of the Argo?

A As far as the engine equipment is concerned I presume it is similar.

Q But you know nothing about it?

A From the description of others.

Q Where are you employed now?

A I am not employed at the present time.

Q How long has it been since you were employed?

A Second day of May, 1912.

Q Where then?

A First Assistant Steamship Alki, the North Land Steamship Company.

Q Now, what other vessels have you worked on besides on the Howard?

A On the steamers Santa Clara, Santa Anna—

Q And vessels of that type?

A —and the steamer Julia B.

Q These are all large vessels with the exception of the Julia B, with large engines?

A Yes sir.

Q Large open faces on the engines?

A Some of them have.

Q Now, from your knowledge of the Argo, what is the size that you are assuming is the opening on the face of this engine through which a man might fall into the crank pit?

A Please state that question again?

QUESTION READ: Now, from your knowledge of the Argo, what is the size that you are assuming is the opening on the face of this engine through which a man might fall into the crank pit?

A I could name the Julia B—

Q I am wanting to know the size of the opening on the face of this engine, you have never seen it, what are you assuming is its size?

A Of the steamer Argo?

Q Of the steamer Argo?

A About six or seven feet.

Q Six or seven feet what?

A Front of columns.

Q So then you are assuming that there is an opening six or seven feet square through which a man might fall—

A I don't know as it would be square; six or seven feet in length.

Q Well, what would be its head?

A I presume about five feet.

Q Now, you think if there is an opening of that size we have described, then that there ought to be a guard to prevent a man from falling in?

A Yes, sir.

Q Have you seen these appliances that you call a guard placed there for the purpose of keeping the oil from being whirled around the engine room?

A Yes, sir.

Q In fact, wherever you have a high pressure engine it is absolutely necessary, is it not, to put some kind of splash pan in front of the crank pit to keep it from throwing the oil all over the engine room?

A No, sir.

Q Did you ever see a high pressure engine that did not have a pan to keep oil from flying over the engine room?

A No sir.



Q Then I say it is necessary to have a pan to keep it from splashing over the engine room.

A Not absolutely.

Q I will withdraw the word absolutely and it would be a very disagreeable engine room to be in if that guard were not placed there?

A Yes, sir.

Q And that is the reason the pan is placed there, is it not?

A Not always.

Q That is the chief reason, however. In the bed plate of an engine, the columns come down in different portions of it in different engines?

A Yes, sir.

Q For instance, some bed plates the columns come down close to the inside of the plate and some they come down in the middle of the plates, such as I mark here (indicating) and some they come down near the outside of the bed plate, don't they? The column that comes down from the cylinder—

A Yes, sir.

Q I say they come down there at the middle or toward one end—

A On top of the bed plate, yes.

Q Now, we will assume our three columns coming down here, and this piece of paper which I have is the bed plate. (Indicating.) Now, inside of this bed plate is the crank pit; now, in a high pressure engine how fast does that crank revolve in a crank pit?

A That depends on the steam they carry.

Q What is the usual amount carried?

A That depends on the type of the boiler they are using.

Q What is the type of boiler usually used?

A There are two types, Scotch Marine and the pipe boiler.

Q Does it make any particular difference as to the speed of the engine?

A Yes, sir.

Q It does. Then we will take the Scotch Marine. If the engine, a high speed engine, about what—about approximately—is its speed?

A From 125 to 175 revolutions per minute.

Q In this crank pit all the oil and drippings from the engines collect—

A Unless there is an outlet in the crank pit.

Q It collects whether there is an outlet or not.

A It will not collect if it runs out.

Q Now, when that oil comes in there if there is no pan to prevent it the centrifugal force will throw it in a stream around the vessel?

A No, sir: not in a stream.

Q How will it throw it?

A It might go in drops.

Q And keep on going in drops until it has a mark around the engine room?

A No, sir.

Q And it will keep on in drops until it begins to run and splash, especially on the open side of the engine?

A The side of the boat is quite a ways from the

engine, and I have never seen an engine to splash to the head.

Q As a matter of fact you come back to the proposition that about a little boat of this kind you know very little?

A No, sir.

Q Now we come to the columns again. This pan to prevent the oil from splashing out, the oil comes against it, naturally, doesn't it, and if the engine bed or plate projects beyond the opening it will run out into the engine room, won't it?

A Yes, sir.

Q So that it depends upon where the column is in the engine room whether this splash pan is placed inside or outside the column, doesn't it?

A Not in my experience; no, sir.

Q If the pan—if the columns come down on the outside or near the outside of the engine room and the oil runs against it and it was put on the outside it would run into the engine room instead of running into the crank pit?

A Yes, sir.

Q So that where it is placed that way it would be necessary to have it act as a splash pan, to put the pan on the inside of the column, wouldn't it? If it is to act the purpose of the splash pan?

A No, sir.

Q Tell us how you would fix it?

A This splash pan is put on the outside, could be put—it could be brought around to the bottom

on top of the bed plate, and a longer pan to run it down on the inside of the crank pit.

Q That would make a very handy splash pan to remove when you are working with the crank shaft, wouldn't it?

A No, sir. It would keep the oil from running on the floor.

Q Tell me where you saw one of this type?

A On the Steamship Alki.

Q Still there now?

A Unless it has been taken away since the 2nd day of May, 1912.

#### RE-DIRECT EXAMINATION.

BY MR. FULTON:

Q Mr. Wright, if this guard were not fastened at the bottom it could not act as a protector from oil, could it, from the oil splashing, if it were not fastened at the bottom?

A It could.

Q Wouldn't the oil come through anyway from the bottom?

BY MR. BYERS: We object to this question because witness has already testified, and for the additional reason that the question is leading and suggestive.

BY MR. FULTON:

Q Didn't you state to me, to Mr. Hall and myself, that if this guard is not fastened at the bottom it would not act as a splash pan because it would not

wholly prevent the oil from coming out; the oil would come out whenever it was not fastened?

A I couldn't say that I made that statement.

Q Wouldn't it have that effect?

A That would depend upon how far down into the crank pit the guard ran.

Q You were asked what size opening you were assuming was upon the Argo and you stated you assumed about five feet; five to seven feet—

A I said about six or seven feet long, about five feet high.

Q Now, supposing it was only three or four feet, that would make no difference in—

BY MR. BYERS:

Objected to because it is leading and suggestive.

Q —assuming it was only three or four feet, what difference would that make?

A None.

Q A person would be just as liable to step into or get into an opening three or four feet as five or six feet?

BY MR. BYERS:

Objected to because it is leading and suggestive.

A No, I can't say as he would, for the reason that the space—the smaller the space the less risk you would run in throwing you into that space.

Q But in your opinion a guard would be necessary for that space, nevertheless?

BY MR. BYERS: We object to that because it is leading and suggestive.

A Yes, sir.

Q That is all.

### RE-CROSS EXAMINATION.

BY MR. BYERS:

Q In an opening two by three if a man went to slip in he could very easily put his hands against the sides of the cylinders to brace himself against them?

A It depends how high the cylinders are.

Q Well, suppose they are only four feet from the floor, or four feet from the engine bed?

A He could.

Q And if these columns were, say, only 12 to 18 inches apart, it would be very difficult to get in there without putting his hands against one column or the other, wouldn't it?

A That depends greatly on the conditions.

Q Yes, I am taking the conditions such as I described. If they were only 12 or 18 inches apart, in other words, leave a space about as wide as I indicate here, and about that high (indicating) it would not require very much care for a man to keep out of that space, would it?

A No, sir.

Q So that if that is approximately the space that is not a very dangerous position for a man to be in, if he has four and a half feet to walk along on?

A No, sir.

Q That is all.

A. L. M'NEALLY, produced as a witness on behalf of the Petitioner, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION.

BY MR. BYERS:

Q Mr. McNeally, state your full name.

A Arthur L. McNeally.

Q Where do you reside?

A Seattle.

Q What is your business?

A Manager Pacific Tow Boat Company.

Q How long have you been manager?

A Since August, 1910.

Q Whom did you succeed as manager?

A W. R. Chesley.

Q What is the business of the Pacific Tow Boat Company?

A Towing.

Q Is it the owner of the tug Argo?

A It is.

Q Was it the owner of the tug Argo on November 22, 1910?

A It was.

Q And it is still the owner?

A It is.

Q Do you remember any occurrence that happened on about the 22nd day of November, 1910, with reference to an accident?

A Yes, sir.

Q Were you manager of the Pacific Tow Boat Company at that time?

A I was.

Q I would ask you whether or not the tug Argo carries passengers?

A It does not.

Q I would ask you whether or not on the voyage on which this accident happened the steamer or tug had earned anything from passengers?

A She had not.

Q Or from tow?

A She had not.

Q Was that tug fully manned and equipped in accordance with her certificate of inspection at that time?

A She was.

Q Who was the manager or master?

A R. W. Wahl.

Q At the time of that accident— Are you a stockholder in the Pacific Tow Boat Company?

A I am not.

Q At the time of the accident were any of her stockholders on the vessel, present on the boat?

A They were not.

Q Do you know whether or not they knew anything of the accident until after they heard of its occurrence?

A Knew nothing of it to my knowledge.

Q Do you know Iver Nordstrom?

A I have seen him a few times.

Q Do you know of your own knowledge what position he occupied at that time?

A Fireman.



Q Do you know how long he had been employed at the time of the accident?

A No, I don't know.

Q Do you know approximately how long?

A No.

Q State where this vessel was being navigated at the time of the accident?

A Between Seattle and Richmond Beach.

Q On what water?

A Puget Sound.

Q That is all.

#### CROSS EXAMINATION.

BY MR. HALL:

Q Mr. McNeally, what was your business before you became manager of the Pacific Tow Boat Company?

A Immediately?

Q Yes?

A Bookkeeper.

Q What was your business prior to that?

A I had been connected with tow boat business in different capacities for six or eight years.

Q In what position?

A Well, assistant manager, bookkeeper.

Q All of your duties were clerical before that?

A Absolutely.

Q You never had any experience in the running of tugs?

A Actual operations, you mean?

Q Yes.

A No.

Q You know nothing about the actual operations of tugs, then?

A I do not.

Q You have never had any experience as a sailor or otherwise?

A No, sir.

Q How many tugs did the Pacific Tow Boat Company have when you took charge as manager?

A Nine.

Q Will you give me their names?

A Argo, Yellow Jacket, Active, George T., Lumberman, Defender, Hero, Parthia and Ruth.

Q Now, which of these tugs, if any, are of the size of the Argo, in the same general class of tugs?

A Yellow Jacket.

Q Any of the others?

A Well, the Active is approximately the same size.

Q Is the equipment of the Active in so far as her boilers and engines are concerned the same as the Argo?

A I know nothing definite regarding the construction of the boats.

Q What were your duties as manager?

A General duties of any manager.

Q Well, I mean—be a little more explicit. As regard to the tugs, did you have anything to do with the tugs themselves, or was your work more specially connected with what they earned or such as that?

A It was.

Q It was more especially connected with the earnings and the office work rather than the operating?

A Yes, sir.

Q Did you hire the men?

A I had hired—

Q Did you at that time?

A What way do you mean?

Q I mean do you hire the captains, mates and firemen?

A I hire the captains and engineers and the officers.

Q What is it?

A I hire the officers, the other men on the boats are hired by the men on the boats.

Q Did the Captain hire the engineer?

A Sometimes we got men through the employment office.

Q Do you know how you came to get Iver Nordstrom?

A No, I don't remember.

Q Is there an officer of the company by the name of Studdert?

A He is our Port Engineer.

Q Spell the name.

A S-t-u-d-d-e-r-t.

Q Do you know— Did you make any examination of the different tugs when you became manager?

A No.

Q Have you made any examination since?

A No. That is, if you mean in particulars.

Q Yes.

A No.

Q Where had the Argo been on this trip?

A Going down to Richmond Beach.

Q And she was returning from there?

A She was on the trip between here and Richmond Beach.

Q What was she doing at Richmond Beach?

A She had gone down there to pull the tug McKinley off the beach.

Q Did she pull the McKinley off the beach?

A No.

Q Who was the owner of the McKinley?

A Jack Sutherland.

Q Did you make any charge for this trip down there?

A Not for that trip.

Q Because it was unsuccessful?

A His boat followed. I might say in connection with that trip it was the intention originally to bring a scow down, but owing to the weather conditions the scow was left and brought down later.

Q But there was no charge for this trip?

A No.

Q Did you say that the boat was fully manned and equipped?

A She was.

Q What do you mean by that?

A Full compliance with the regulations.

Q What are the regulations?

A It is supposed to have—

Q How many men?

A Seven men altogether. Four licensed officers, and seven men altogether.

Q Seven men altogether?

A Seven men altogether.

Q And equipped?

A She was fully equipped so far as I know.

Q As a matter of fact you do not know?

A Not positively.

Q When you said she was fully manned and equipped you really did not mean that you know of your own personal knowledge that she was fully equipped?

A I mean that instructions had been given to fully man and equip her.

Q Who had given the instructions.

A I had given the instructions to the captain.

Q As I understand it from your answers to the preceding question, not being familiar with tugs of this class and the full make up of them, you can not tell of your own knowledge whether it was fully equipped or not?

A Not without looking at the regulations.

Q Well, did you look at the regulations this time?

A No.

Q Do you know what the regulations are?

A No.

Q No?

A Not without looking at them.

Q Then you do not know whether she was fully equipped or not?

A Probably I don't.

Q Do you know the duties that Iver Nordström was supposed to perform on that boat?

A Not specially, no.

Q Did you ever go aboard the Argo prior to the accident to Iver?

A Yes, I had been aboard her.

Q Did you ever make an examination of her as to her equipment?

A No.

Q You did not know anything about the condition of this guard?

A No.

Q Whose duty was it to inspect the boats and see that they were fully manned and equipped?

A Why, the Port Engineer's.

Q Port Engineer, Mr. Studdert?

A Yes.

Q Is that his duty?

A He looks after it to see that the things are all in proper shape.

Q I take it, then, that work is left for him to see to all the tugs?

A So far as the engine room is concerned.

Q Would that include any guards around the crank pit?

A I should think so.

Q It is then as a matter of fact his duty to see that everything around the engine room is correct?

A I should think so, yes.

Q You know, don't you? If it isn't his duty, it is somebody else's duty, and you say it is his particular duty?

A To look after the engine room, yes.

Q That includes the guards?

A Yes.

Q Mr. McNeally, you are manager of this company, you run the whole thing?

A I understand that.

Q You know what his duties are?

A Yes.

Q Do you employ the Port Engineer?

A I do.

Q When you employed him, did you tell him what his duties were?

A To look after the engine rooms, that is his duty.

Q Did you tell him at that time if there was anything unsafe that he must make it safe?

A I did not tell him that.

Q Then whose duty was that?

A How?

Q Whose duty would that be, then?

A To see that those things were safe?

Q Yes.

A I really don't know.

Q You say that this tug was fully manned and

equipped and passed the inspection of the Government inspector?

A Yes, so far as my knowledge is concerned. She had passed inspection, I think.

Q Do you know when she passed inspection?

A No, I don't remember.

Q Do you know whether or not she had been inspected while you were manager prior to the accident to Iver?

A I do not know.

Q Were you ever on board when an inspection was made?

A No.

Q Will you state how an inspection is made?

A Why, we notify the inspectors to come down to inspect the boat, it is their duty to make the inspection.

Q Do they come to the office and tell you they are ready to make the inspection?

A No.

Q You don't know when the inspection is made?

A They tell us about when.

Q Is anybody detailed from your office to assist them?

A Mr. Studdert is generally there when they inspect the boats.

Q He is there to assist them in the inspection?

A What do you mean?

Q He is present on the boat when the inspection is made?

A He is.



Q What is he there for?

A Why, to see what they want done.

Q Well, I wish— Are you familiar with the tug Active?

A Only in a general way.

Q You don't know much about the details of the boat?

A No, I don't.

Q Do you know whether her crank is lower than the floor of the deck, as the Argo's is?

A No, I don't.

Q Do you know whether there is a guard around the crank pit on the Active?

A No, I don't.

Q Did you know at the time, or prior to the time that Iver was injured that there was a Guard around the crank pit of the Argo?

A No.

Q Do you know whether there is one there now, or not?

A No, I don't.

Q Do you know whether the cylinder, or the crank pit of the Argo is lower than the floor of the deck?

A No, I don't know.

Q Did I ask if you knew the duties of Iver Nordstrom on the boat?

A You did.

Q And you said you didn't?

A Only in a general way.

Q What do you mean by general way?

A Well, he was the fireman.

Q Did you assume this duty— When you took charge as manager of the Pacific Tow Boat Company, did you have the same duties that Mr. Chesley had who preceded you?

A Well, I presume generally the same, yes.

Q Who are the officers of the Pacific Tow Boat Company?

A F. M. Dugan is President, W. L. Beddow is Vice President, J. L. Bridge is Secretary and Treasurer.

Q Now, outside of the officers or next to the officers of the company you have complete charge?

A No.

Q Who has charge over you?

A The Board of Directors.

Q Did the Board of Directors when you took charge of the company tell you what your duties would be as manager?

A Not specifically, no.

Q Among your instructions received when you became manager, was it your duty to see that the boats were fully manned and equipped?

A No instructions given to that effect.

Q Well, whether or not they were given, was that your duty?

A The United States makes them keep them equipped.

Q But, you understand, Mr. McNeally, that a corporation have to act through its agents, therefore the corporation would have to have somebody

whose duty it was to see that they were fully manned and equipped, these tugs. Now, was that your duty?

A Why, in an executive way, yes.

Q Well, explain what you mean by that?

A Well, if I found anything that was unmanned it would be my duty to see that it was manned.

Q Well, how would you find—

A My instructions to the captain are to keep them fully manned and equipped to comply with the United States regulations.

Q Then, as I understand you, you give those instructions to your captains?

A Naturally.

Q Do you see that the instructions are carried out by the captains?

A Why, not particularly; they are liable to a fine or suspension if they do not keep their boats in proper shape.

Q How do you know when a boat is not fully manned or equipped? Do you wait until an accident happens?

A Every inspection of the Government tells us whether they are, or not.

Q How often are the inspections made?

A Once a year.

Q Supposing something would get wrong after the inspection?

A Unless it was reported to me I would not know.

Q You don't make it the duty of your captains to report?

A It is supposed to be their duty.

Q Do you make it their duty when they find anything wrong to report it to you?

A They have those instructions.

Q From you?

A Yes.

Q Did anybody make a report to you about this guard that was on the Argo around the Crank pit?

A They did not.

Q You said you didn't know when the prior inspection was made?

A I don't remember.

Q Do you know when the inspection after the accident was made?

A No, I don't know when her inspection comes due.

Q Then, how do you know when it is time to notify the inspectors?

A The captain or port engineer keeps run of those things as a rule. We are subject to fines if we run over time.

#### RE-DIRECT EXAMINATION.

BY MR. BYERS:

Q Mr. McNeally, you are general superintendent of the Pacific Tow Boat Company?

A Yes sir.

Q And is it customary—is it the province of the manager of the business to go down and inspect the

boats and see that the items in the boats are installed?

A It is not.

Q How often are the boats inspected by the Government?

A Once a year.

Q When the Government has made an inspection, what does it do?

A Why, they go over all the equipment thoroughly, so far as I know.

Q And if they find anything wrong, what do they tell you about it?

A Tell us about it.

Q Then what does the captain do with regard to the boat, after the inspectors have told them what to do?

A Report at the office.

Q Then what is done with it?

A Fill it.

Q Then what? Is it the duty of the captain and port engineer to keep their engine room or ship in good condition until the next annual inspection?

A They have instructions to do so.

Q They always do so as a matter of fact, don't they?

A Yes, sir.

Q They are subject to fine and have their papers taken away if they do not comply with these rules?

A I believe they are.

Q Do you know, as a matter of fact, whether

this boat had not been inspected each year since she had been in commission?

A She certainly must have been, she could not be running.

### RE-CROSS EXAMINATION.

BY MR. HALL:

Q Do you know whether she had been inspected each year or not?

A I positively know.

Q You testified in your cross-examination, I believe, that you did not know how the inspection was made, didn't you?

A I did not testify, only did not know specifically how it was made.

Q You know an inspection was made, but you did not know how they made it? Wasn't that your answer?

A I don't believe so; I don't remember.

Q Now, did you ever have any experience with running of engines?

A No, sir.

Q Of any kind?

A No, sir.

Q You never had any? In your duties you had never worked around a boat, been employed on a boat around engines or the crank pits?

A No, sir.

Q Then you couldn't know from your own knowledge whether or not something was wrong?

A No, I would not.

Q Would you know from your own knowledge whether a certain place would need a guard or not?

A No. I might have an opinion.

Q Was this guard ever reported to you after the accident?

MR. BYERS: We object to that as immaterial and irrelevant as to what occurred after the accident does not have any bearing on this case.

A I never knew there was any guard there.

Q When did you first find out there was a guard there?

A I don't know today there is a guard there.

R. W. WAHL, produced as a witness on behalf of the Petitioner, being first duly sworn, on oath testified as follows:

#### DIRECT EXAMINATION.

BY MR. BYERS:

Q Your name is R. W. Wahl?

A Yes, sir.

Q Are you a licensed Master of steam vessels?

A Yes, sir.

Q How long have you been a licensed Master of Vessels?

A Since '98.

Q Were you in charge of the Argo on November, 1910, at the time the accident happened to Iver Nordstrom?

A Yes, sir.

Q How long had you been in charge of the vessel at that time?

A Since the 24th day of October.

Q I would ask you, Captain, to state whether or not it is the duty of a Captain to see that his vessel complies with the certificate of inspection of the inspectors with regard to equipment?

A Yes, sir.

Q That is outside of the engine room?

A Yes, sir.

Q Whose duty is it inside of the engine room?

A Chief Engineer's.

Q Outside of the engine room, I would ask you if the vessel was fully manned and equipped?

A Yes, sir.

Q What lights did she carry?

A She carried the lights that are compelled by law to be carried.

Q That is what we call a legal conclusion. I want you to state just what lights she carried?

A Mast head light and side lights; a range light—white range light.

Q How many officers and men did she have aboard?

A Four officers and three men.

Q Did that comply with the certificate of inspection?

A Yes, sir.

Q A vessel of this class is inspected how many times a year?

A Once a year.

Q When the inspectors come through, what are they inspectors of?



A Hulls and Boilers.

Q Two separate men?

A Yes, sir.

Q And have their separate provinces?

A Yes, sir.

Q Those vessels are inspected every year, as you say, by these inspectors?

A Yes, sir.

Q Then what is the Captain's duty with regard to it?

A To see that everything is as they order on the vessel.

Q Does the Government take any measures to see that those recommendations and suggestions are complied with?

A Yes, sir; they don't furnish the certificate until everything is in shape.

Q Now, is there any other method that the Government takes to see that these rules are complied with? Are you visited any other time?

A We are boarded sometimes at times—

Q You are liable to be boarded at any time? And if the vessel isn't in shape and in compliance with these regulations—

A The captain is fined or his license suspended for a certain time, usually from fifteen to thirty days.

Q Were any of the owners of the Pacific Tow Boat Company present at the time of this accident?

A No.

Q Were any of them on board of the boat, or had been during that day?

A Not that I know of.

Q Captain, can you give the dimensions of that boat?

A I can give her tonnage.

Q What was her tonnage?

A Forty-four net ton; Sixty-five gross ton.

Q What is her length?

A I believe that she is 64 keel and 20 foot beam, and 9 feet 6 depth of hull.

Q Were you engaged in navigating on the waters of Puget Sound on that night in question?

A Yes, sir.

Q Was the Argo seaworthy in every particular at that time?

A Yes, sir.

Q She was a vessel of what age, as near as you know?

A Four years.

Q About four years, and she was sound, was she?

A As near as I know.

Q You are still running on her?

A Yes, sir.

Q She is sound now?

A As near as I know, she is.

#### CROSS-EXAMINATION.

BY MR. HALL:

Q You went to work October 24, 1910?

A Yes, sir.

Q That was just little less than a month before Iver was injured?

A Yes, sir.

Q Where had you been?

A Moved off the George T.

Q How long had you been working for the company at that time?

A Since 1905.

Q You said that there were four officers and three sea men?

A Yes, sir.

Q Who were the officers?

A Myself—

Q As Captain?

A C. O. Jensen, Chief Engineer; Brown Field, First Assistant; M. Brant, Mate.

Q And the three men?

A Iver Nordstrom, deck hand's name I don't remember. I don't remember the cook's name; we changed deck hands and cooks.

Q Was there a cook and deck hand on board?

A Yes, sir.

Q The law requires that number of men and officers on board a boat like the Argo?

A Yes, sir.

Q You say you had charge of the boat except the engine room?

A Yes, sir.

Q Would you have any charge of the engine room at all?

A No, not more than to give orders to the Chief.

Q Now, supposing there was something broken or defective in the engine room, whose duty was it?

A Chief Engineer's.

Q Then you had nothing to do with the passages around the crank pits in that part of the boat at all.

A No, sir.

Q You said that you thought this vessel was seaworthy?

A Yes, sir.

Q What do you mean by seaworthy?

A That she is in shape to go in any waters she is licensed to run on.

Q Do you mean that she is fully equipped in every particular?

A Yes, sir.

Q Would you know— Now, suppose there was a defect in the engine room, would that render the vessel unseaworthy?

A I don't know.

Q Well, for instance, if there was in the deck of the engine room there, in the passageway, supposing there were two or three planks out there, would the vessel be seaworthy then?

A I don't know.

Q What is your opinion, do you think it would be seaworthy then?

A I don't really know whether I do or not.

Q You know where Iver was injured?

A Yes, sir.

Q You know the passageway that is around the crank pit for the men to walk around?

A Yes.

Q Now, supposing there were two or three planks broken in that passageway, would the boat still be seaworthy?

A Yes, I think so.

Q Now, isn't it a fact that you mean by seaworthy the fact that she has what lights are required by law, and that her hull is in good condition, is that what you mean?

A Yes, sir.

Q You don't mean by seaworthy that all the internal equipment is all right, do you? Do you mean by seaworthy that all the equipment in the engine room is all right?

BY MR. BYERS: We object to that, the witness has already testified in answer to the question of counsel.

A Well, I think she is.

Q You think, then, that if there are three or four boards gone down there in the passageway she is still seaworthy?

A Yes, sir.

Q What papers do you hold?

A Master's.

Q When did you get them? . . .

A 1908.

Q 1908 or 1898?

A 1908; I had pilot's papers before that.

Q You have just been a Master, then, since 1908; what part of the year?

A October, 1908.

Q Then you had been a Master for two years?

A Yes, sir. I had Pilot's papers since '98 and I could go as Master on those papers up till that time; the law was changed; it was Master's papers instead of Pilot's papers.

Q Are you required in your examination for Master to be familiar with the laws passed by congress relative to inspection of vessels?

A Yes.

Q You are supposed to read them and to know them?

A Yes, sir.

Q Going back to the former line of questioning, if there were two or three boards broken or gone in that passageway, whose duty was it to report those things and get them repaired?

A The engineer's.

Q Chief Engineer?

A Yes, sir.

Q You had nothing to do with that part of the boat, then?

A No, sir.

Q You would have nothing to do with the guard on that boat if there was one there?

A No, sir.

Q That didn't come under your supervision at all?

A No, sir.

Q You say that the boat is inspected annually?

A Yes, sir.

Q By two inspectors?

A Yes, sir.

Q One, inspector of hulls, the other inspector of boilers.

A Yes, sir.

Q Under whose supervision would the inspection of the hull take place, under yours as Captain?

A I don't understand that.

Q I mean when the inspectors came aboard to inspect the boat, one would be the inspector of hulls and the other inspector of boilers?

A Yes.

Q Now, would you have anything to do with showing them over the boat?

A Yes, sir.

Q You would. Now, if there was anything wrong with the equipment of the vessel outside of the boilers, then it would be your duty under the law to tell the inspectors of such defects?

BY MR. BYERS:

Object to the question and move to strike it on the ground that it is a question of law to be decided by the court and on which this witness is not examined and therefore improper cross-examination on which he is incapable to testify, as to the manner in which the inspectors inspect vessels and the way they inspect them is laid down in the rules, and the supervising of inspections is a matter provided by law.

Q You say that you stated, did you not, that it was your duty to see that the vessel and equipments complied with the certificate of inspection?

A Yes, sir.

Q You testified to that?

A Yes, sir.

Q And as long as it complied with the certificate of inspection that is all you were required to do?

A As regard to that inspection, yes, sir.

Q Now, what does the certificate of inspection require as to the equipment being in good condition?

A Why, it requires for all equipment to be in good condition.

Q What do you mean by equipment, Mr. Wahl?

A Life saving apparatus, lights, steering gear, anchors, fire hose, fire buckets, life boats, anchor cables—

Q Does it have any reference to the machinery or to the other parts of the boat being safe for the men to work around?

A I don't know.

Q Supposing there was some place that the inspectors could not see or did not see that was defective, was that your duty to point it out to them?

BY MR. BYERS: Object to this question because it is absolutely contrary to the law because it assumes a proposition contrary to the facts, because there are no places that the inspectors are not presumed under the law to see.

A If I knew it.



Q You stated it was your duty to see that it was all right, was it not?

A Yes, sir.

Q Then, it is for you to know whether there are any defects in there or not, is that true?

A If I know of any it is up to me to report them.

Q How do you find them out?

BY MR. BYERS: Objected to on the ground that it is improper cross-examination for the reason that witness is being examined on matters of law provided by statutes and rules promulgated in them provided for inspection of steam vessels and that they are not matters of fact at all.

A I didn't quite understand that.

Q Well, if there are any defects in the equipment, Mr. Wahl, how do you get knowledge of the defects?

A I look over them and see if they are all right.

Q You are around the boat and look it over to see if they are all right?

A Yes, sir.

Q You testified a few minutes ago that it was your duty to keep the vessel up to the requirements of the certificate of inspection, is that so?

A Yes, sir.

Q Now, the certificate of inspection shows, does it not, that the inspectors have examined the hull and the equipment and that they are all right in every particular, is that true?

A Yes, sir.

Q Now, it is your duty, then, to—in keeping it

up so as to be covered by this certificate of inspection, to see that everything is in good shape on board the boat?

A Yes, sir.

Q Supposing, Mr. Wahl, there was an opening in the deck there for some purpose, would it be your duty to see that there was a cover provided for the hole or that there was a rail around the hole—would that be your duty?

A It would be on deck.

Q Would it be in the lower deck where the engines are?

A No.

Q Whose duty would that be?

A The Chief Engineer's.

Q You went on this boat October 24, 1910?

A Yes, sir.

Q Did you inspect the boat and go over it then to see if everything was all right?

A I looked after the steering gear and lights on board the deck.

Q Did you go over the decks and equipments to see that they were all right?

A Yes, sir.

Q Did you go into the engine room to see if that was all right?

A No, sir.

Q That wasn't any of your duty at all?

A No, sir.

Q Was this boat on the day Iver Nordstrom was injured complying with the certificate of inspection?

A As near as I know.

Q As near as you know, what do you mean by that, Mr. Wahl?

A Well—

Q You testified that it was your duty to see that the equipment was safe?

A Yes, sir.

Q Had you made an inspection to see it was safe?

A I didn't make an inspection, but I knew there should not be anything missing from the equipment but what I would know it.

Q Had you been down in this floor where Iver was injured before the date of his injury?

A I don't remember.

Q Did you know about the guard being around that crank pit?

A Not that I know of.

Q Didn't you ever see a guard there?

A No sir, I don't know.

Q What is it?

A No, sir.

Q You never did see a guard there. Did you ever see a ship that hadn't?

BY MR. BYERS: We object to this because it is direct examination and we object to this unless counsel makes this witness his own.

Q Was it your duty as captain of that vessel to see that there was a guard around there?

A I don't think so.

Q Whose duty was it, then?

A Engineer's.

Q You said you don't think so, do you know whether or not it was your duty? Do you know whether or not it was your duty to see whether a guard was there, and if there was one there to see if it was in good condition?

A I don't know.

Q Mr. Wahl, if you didn't know whether a thing was a part of your duty or not, how would you find out whose duty it was?

BY MR. BYERS: Object to the question as calling for not only a conclusion of fact, but it is calling for a conclusion of law and is improper, irrelevant and inadmissible.

Q If you did not know whether or not a certain thing was your duty, how would you find out, from whom would you find out whether it was your duty or not?

A I don't quite understand.

Q Now, it wasn't your duty to run the engine, was it?

A No, sir.

Q It wasn't your duty to see that the equipment of the engine room was all right, was it?

A The boiler inspector generally notified the engineer if there was anything wrong.

Q Was that your duty to see if the equipment of the engine room was all right?

A Not that I know of.

Q How did you learn, or where did you learn

your duties as Captain, Mr. Wahl, would that be from experience?

A Yes, sir.

Q And then you took an examination?

A Yes, sir.

Q To show what your duties were?

A Yes, sir.

Q And if you passed that examination you got your Master's license?

A Yes, sir.

Q Now, when you got your Master's license, then you knew what your duties were on board a steam vessel, didn't you?

A Yes, sir.

Q Then you must have known, must you not, what your duties were on board the Argo?

A Yes, sir.

Q You say here you did not know whether a certain thing was one of your duties or not, don't you?

A About the engine room?

Q Yes, you said you didn't know whether the duty of putting up a guard there, if one was needed, was your duty or not?

A As near as I know it was not my duty.

Q It is the chief engineer's duty?

A Yes, sir.

Q What does the certificate of inspection state, Mr. Wahl?

BY MR. BYERS: We object to that because the certificate itself is the best evidence of what it states.

A States that the proper lights and proper life saving apparatus and anchors, fog signals and distress signals in case the steam goes off, the boiler and steering gear and water barrel and water buckets, fire hose, life preservers.

Q Does it mention all of these things?

A Yes, sir.

Q Does it mention anything about the machinery and the other equipment?

A About the boiler.

Q Does it say anything about the machinery?

A Not about the machinery except the size of it.

Q Does it say that the machinery and other equipment should be in good condition?

A No, sir.

Q Who inspects the boat as to machinery?

A The assistant inspector.

Q Assistant United States Inspector?

A Yes, sir.

Q When was this boat inspected after the accident?

A First day of December.

Q What year?

A 1910.

Q Was the boat in the same condition then as it was prior to the accident?

A As near as I know.

Q Was the guard that was on there around the crank pit in the same condition as it was at the time Iver was injured?

A I don't know.

Q Is the guard today in the same condition as it was when he was injured?

A I think it is.

Q When did you see it last?

A I could not say.

Q Have you seen it since then?

A Well I don't know whether I have been down stairs since or not.

Q Do you know as a matter of fact, that the guard has been changed to the outside of the columns?

BY MR. BYERS: We object to that as not being proper examination about which this witness is being cross-examined, and for the reason that it is immaterial what has been done with this boat since this accident.

A I don't know; I don't remember.

Q You don't remember?

A No, sir.

Q Then, you do not know whether it has been changed since the accident or not?

A Not that I remember.

H. S. STUDDERT, produced as a witness on behalf of the Petitioner, being first duly sworn, on oath testified as follows:

#### DIRECT EXAMINATION.

BY MR. BYERS:

Q Your name is H. S. Studdert?

A Yes, sir.

Q And you are the Port Engineer for the Pacific Tow Boat Company?

A Yes, sir.

Q As Port Engineer you—what are your duties?

A To look after the engine rooms in the various boats.

Q You looked after the engine room of the Argo?

A Yes, sir.

Q I would ask you whether or not at the time of the accident, you were such Port Engineer, November, 1910?

A Yes, sir, about three years I have been there.

Q I would ask you to state whether or not the engine room at the time of the accident was identical, calling special attention with regard to the splash pans, with the time when they were previously passed and inspected by the inspector of boilers?

A Yes, sir, they were just the same.

Q I would ask you if you know how long prior to that time they had been the same?

A They were the same ever since I went to the company.

Q And that had been some time before that?

A Yes, sir.

Q I would ask you whether or not that engine room was completely equipped substantially as all other vessels of the type of the Argo?

A Yes, sir, just the same, just as substantially.

Q What kind of engine?

A fore and aft compound.



Q What is its size?

A 9—22—20.

Q It has three columns on its open face?

A Yes, sir.

Q And the engine faces toward the starboard side of the boat?

A Yes, sir.

Q Could you tell us the size of the boat?

A The boat, I think, is 64 feet long, 20 foot beam, and I am not positive, but I think 9 foot hold.

Q Are you a licensed engineer?

A Yes, sir.

Q When was your first license?

A About eighteen year ago.

Q Have you been—where have you been employed?

A On various boats and places.

Q How long by the Seattle Tug Company?

A Eight or nine years.

Q And since, where have you been employed?

A Port Engineer for these people down here.

Q Seattle Tug Company operated here in Seattle, did it?

A Yes sir, I was Port Engineer for them too for a while.

Q Seattle Tug Company and Pacific Tow Boat Company operate substantially the same class of vessels, tug boats on Puget Sound?

A Yes sir.

Q I would ask you to state whether or not the

engine room equipment complied substantially with the certificate of inspection issued to that vessel?

A Yes sir.

Q The vessel had been inspected as a matter of fact how many times before this accident by the United States inspectors.

A They are inspected every year.

Q It must have been inspected about four times then?

A Yes sir, about four times.

Q You hired Iver Nordstrom, did you?

A Yes sir.

Q Was it your duty to hire engineers and firemen?

A I hired engineers.

Q Did you hire Iver Nordstrom?

A Yes sir.

Q What, if anything, did he report about himself at the time you hired him?

A He claimed to be a fireman.

Q And you hired him as fireman??

A Yes sir.

Q How long before this accident in question did you hire him?

A I can't recall, about a month or six weeks, in that neighborhood.

Q Had he ben employed until the time of the accident?

A Yes sir.

Q On this identical vessel?

A Yes sir.

Q Where did his duties as fireman take him?

A In the fire room, in the engine room.

Q Could you state in a general way and very briefly what are the duties of a fireman?

A He keeps steam, does the oiling, cleaning up, cleaning bilges, any labor that is to be done around the engine room. Coaling.

Q Were you present the night of the accident?

A No sir.

Q When did you first learn of it?

A Next morning.

Q Did any of the owners of the boat, so far as you know, know of the accident before it occurred, or know of the cause of the accident before it occurred.

A No sir.

## CROSS EXAMINATION

BY MR. HALL:

Q Mr. Studdert, you said it was your duty to look after the engine rooms of all the tugs belonging to the Pacific Tow Boat Company?

A Yes sir.

Q It was your duty at the time Iver was injured?

A Yes sir.

Q It had been your duty for all the time you had worked there?

A Yes, according to the United States inspectors, what they wanted done.

Q Was it a part of your duty to look after the passage way around the crank pit?

A Every part of the engine room.

Q Deck floor?

A No, no.

Q The floor?

A Yes, the floor of the engine room?

Q If there were three or four planks loose in the passage way around the crank pits—

A It would be my duty to have it fixed.

Q Who assigned that duty to you?

A Pacific Tow Boat Company.

Q When you went in their employment as Port Engineer three years ago?

A Yes sir.

Q Did they tell you to look after the guards?

A I was supposed to look after the engine rooms entirely.

Q When you went aboard did you make an inspection of everything?

A Yes sir.

Q Did you inspect this guard around the crank pit?

A Yes sir. It is really not a guard it is put up for a splash pan.

Q How do you know?

A That is my candid opinion.

Q What if the manager of the boat company testified that he recognized that there should be a guard there and that he put it up as a guard, would you change your opinion?

A No sir.

Q You would still say it is a splash pan?

A Yes sir.

Q Don't you recognize there should be a guard there?

A Not necessarily.

Q What is to prevent a man from falling in?

A There is not very much danger of falling in that part of the engine.

Q The crank pit is below the floor is it not?

A The crank pit is always below the floor.

Q Are you sure of that?

A You may get one in a great many that isn't.

Q Didn't you ever see a boat where the cranks were on a platform above the floor?

A I can not place any boat of her size or class.

Q Aren't there any on the Sound?

A Very few. You say the bottom of the crank pit? Not that I know of.

Q Would it still be called the crank pit?

A Yes sir, it would not matter what position it is in.

Q Did you make an inspection, at the time you assumed your duties as Port Engineer, of this crank pit?

A Yes sir, on all the boats, I did.

Q You made an inspection of this guard?

A Yes sir, I noticed the splash pan or guard.

Q You call it splash pan and I call it guard, it is the same thing.

A Just a piece of light sheet iron.

Q What thickness was it?

A It is not a sixteenth of an inch, it is very light.

Q Now, did you know at the time that you assumed your duties that it was unfastened at the bottom?

A I knew it was simply laid in there.

Q Did you know it was unfastened at the bottom to the columns.

A No, I did not. I don't think that I did.

Q Wouldn't a careful inspection have shown you it was unfastened?

A I don't know that I would have fastened it if I had.

Q Now, state whether or not you knew whether this was unfastened at the bottom?

A I did not know it.

Q Did you know it up the time Iver was injured?

A No, I did not.

Q Then you could not have inspected it closely, could you?

A Yes sir, I inspected it closely.

Q Did you look at the bottom of this guard?

A I looked at it afterwards.

Q Do you mean to say that it is not necessary to have a guard around a crank pit?

A If it was necessary the United States Inspector would have ordered it there, it is up to them to order it there, it is up to me to keep it there.

Q Do you say it is not necessary?

A No, not necessary.

Q When the inspectors were inspecting the engine room, did you go around the boat with them?

A Yes sir.

Q Did you show them this guard?

A No sir.

Q You did not call their attention to that?

A No sir, I didn't think it needed it.

Q If you had known it was loose at the bottom would you have called their attention to the fact?

A No sir.

Q It would not have any effect on what you told the inspectors?

A I don't think the inspectors would make me fasten it.

Q Do you think they would put a guard there at all?

A No sir.

Q Have you any guards on the other boats?

A Splash pans.

Q What have you on the Active?

A A piece of iron fastened on the columns, standing possibly 8 or 10 inches high, to keep the splash from coming over.

Q Is that all its duty?

A Yes sir, that is what it is put there for.

Q Just to keep the oil from coming out?

A Yes sir.

Q Where is it placed on the inside or the outside of the columns, on the Active?

A On the outside.

Q If anybody should have discovered that this was loose at the bottom it was your duty to do so, was it not?

A Mine or the Chief Engineer's; the Chief Engineer was to report to me if he found anything wrong.

Q Were you present at every time it was inspected?

A Ever since we got possession of the boat, yes.

Q You say that during all the time you were there it was in the same condition at every inspection as it was when Iver was injured?

A Yes sir.

Q Is it the same way now?

BY MR. BYERS: We object to that as immaterial, irrelevant and incompetent.

Q What is the difference now?

A It is on the outside now.

Q On the outside and fastened at the bottom too?

A Yes, there is a piece of board fastened onto it.

Q Have you any interest in the company?

A Yes sir.

Q You are a stockholder in the company?

A Yes sir.

Q How much of an interest have you?

BY MR. BYERS: Objected to as immaterial, irrelevant, improper questioning.

A About \$7,000.00.

Q Out of a capital stock of how much?

A About \$120,000.00.



Q Did you invest this money when you got your position as Port Engineer?

A No sir, had it before.

Q Do you hold any position in the company, are you an officer of the corporation?

A Yes, I am, I have a vote.

Q You have a vote. Are you an officer?

A No sir.

Q Are you director or trustee?

A Yes, director of the company.

Q How long have you been director?

A Just six or eight months, just a short time.

Q But you were a stockholder at the time Iver was injured?

A Yes.

Q You never have been president, vice-president, secretary or treasurer of this company, have you?

A No sir.

Q What other boat on the Sound here that has its crank pit lower than the floor of the deck that is without guards?

A That are without guards?

Q Yes, limit that to your company.

A On all our boats the bottom of the crank pits are below the deck.

Q How many are without guards?

A They all have splash pans.

Q What are those splash pans constructed of?

A Some of inch board, some possibly of just common light iron such as the Argo, I think the Active

has the heaviest one, she is about one-sixteenth, in that neighborhood.

Q As Port Engineer, did you cause any of these guards or splash pans, as you call them, to be put on around the crank pits?

A No, they were all in the same condition when I went there.

Q In the same condition as they were when you went there?

A With exception of the Argo.

Q Is it as effective to prevent the splashing of oil to have this sheet iron on the outside of the columns as it is to have it on the inside?

A Well, in the Argo's case it was better to have it on the inside.

Q You have got it on the outside now, does the oil come out now?

A Yes, sometimes the oil slips out.

Q Have you any other business besides being Port Engineer of the company?

A Eagle employment office.

Q Did you have it at the time that Iver was hired?

A Yes sir.

Q Part of your duties as Port Engineer of this company, I believe, was to hire the firemen, is that true?

A Not necessarily, I hire firemen, anybody hires the firemen, they sometimes hire the firemen on the boats, but I hire the engineers and a part of the other help.

Q You say that when Iver applied to you for employment he said that he was a fireman?

A Yes sir.

Q Did he tell you what his experience was?

A He said he had worked in saw mills, and I think that at the time there was somebody with him that said he had fired in the Old Country.

Q Did he say he had ever been on a boat before?

A I think he did, but I am not positive.

Q When you hire a man like that for the company is he examined as to his qualifications?

A I ask him just what he can do.

Q So that you are satisfied that he can do the work assigned to him?

A Yes sir.

Q Do you give him the instructions?

A Yes sir.

Q What did you tell Iver to do?

A He went to work as fireman.

Q Did you make the arrangements with him as to the amount of salary he was to get a month?

A Yes sir.

Q And other details that were necessary as to his duties?

A Yes, fire and oil and what he had to do.

Q At that time you say you were running an employment office?

A Yes sir.

Q The Eagle Employment Office?

A Yes sir.

Q Here in the city of Seattle?

A Yes sir.

Q Were you at that employment office when Iver applied for work?

A I was there; I hired him.

Q Did you tell him at that time that you had an interest in the company?

A No, I didn't, I am sure I didn't.

Q How much of your time do you spend at this employment office?

A Not very much, I am out a great deal.

Q You charged him a fee for getting him this position?

A Yes sir.

Q If there were anything wrong about the engine room or in the equipment or around there, it was your duty to remedy the defect, was it not?

A Yes sir, that is, I wasn't above the United States inspectors.

Q They would only inspect once a year, wouldn't they?

A Yes sir.

Q There were things happen during the year?

A Yes sir, but the Revenue Cutters would come aboard.

Q How many times a year?

A That was up to them.

Q Do you remember of any time?

A No, they wouldn't tell me anything about it.

Q But when the boat would come in on every trip you would go over it?

A Mostly every trip.

Q And if there was something wrong there you would remedy or repair it?

A Yes sir.

Q If there had been a guard required here it would have been your duty to have put it in, would it not, or to see that it was put in, if one had been required by the inspectors?

A Yes, certainly.

### RE-DIRECT EXAMINATION.

BY MR. BYERS:

Q Did there any change occur in this so-called splash pan or guard subsequent to the inspection of the United States Inspectors and prior to the accident to Nordstrom?

A Give me that question again please.

Q Did there any change occur in this particular, so-called splash pan or guard after the inspectors had inspected it, and before Nordstrom got hurt?

A No change, whatever.

Q When Iver was hurt it was in identically the same condition as it was when the inspectors had inspected it?

A Yes sir.

Q And had been in that condition ever since the vessel had been built?

A Yes sir.

Q Was there anything to prevent Iver from going back and getting tangled up with the main shaft?

A No, he could go in there too, the shafts in a majority of engines are open.

Q As a matter of fact, was it or was it not perfectly open and apparent that if he did stick his feet into the crank pit he would get hurt?

A Certainly.

Q These openings that he could possibly stick his feet through are about how big?

A I never measured them, I think about eighteen or twenty inches probably.

Q And at the foot of these columns and outside was a two by four?

A There was a small board. I don't know what size it was. There was a stick there.

Q About the size of a two by four?

A I could not say.

Q And at the top of these were the cylinders and their casings so that in case of a lurch of the vessel or anything of that sort he could put his hands against these projecting things and keep from going in?

A Yes sir.

Q Did you ever see a tug of this size that did not have the crank pits below the floor?

A No, that is, the bottom of the crank pit.

Q Did you ever see any fore and aft compound engines, other than tugs—

A No, not that class of boat.

Q I want you to explain a little more. What are these splash pans for?

A The cranks going around dip the water that

comes from the drain on the engine and there is always grease mixed in it, and that throws it around the engine room.

Q There is always a little leak?

A Yes sir.

Q What is that crank pit for?

A It's a space made for the cranks to go around in.

Q What is the pit for?

A Just a space so as the shaft will revolve.

Q And there is where all the oil and drippings go into?

A Yes sir.

Q And the crank shaft with its counter balance—

A Picks it up.

Q And the straps are revolving around in the crank pit?

A Yes sir.

Q So that when the oil collects—

A It picks it up and throws it over the boiler and over the engine room.

#### RE-CROSS EXAMINATION.

BY MR. HALL:

Q When was the inspection made after this accident, December 1st?

A About December, I can't tell the date.

Q Were you present?

A Yes sir.

Q With the inspectors when they made the inspection?

A Yes sir.

Q You say they made that inspection when the guard was in the same condition it was when Iver was injured?

A You speak of the inspection after the accident?

Q Yes.

A No, it was outside then, I changed it.

Q You are positive of that?

A Absolutely.

Q The bottom was loose the same as it was—

A Every inspection until after he was injured.

Q How do you know it was loose?

A It wasn't exactly loose, it was held sufficiently to stay there.

Q There was no bolt?

A It was inside the heads of some bolts.

Q And not fastened with any bolts?

A It was simply inside the bolts.

Q It was put in there as a splash pan, it wasn't put there with the idea of being a guard and therefore wasn't made substantially, it was not made for the purpose of being a guard?

A It was a splash pan.

Q That being the case, it did not make any difference whether the bottom was loose or not?

A Yes.

Q How was the top fastened?

A By U bolts.



Q You could see that the bottom was unfastened?

A The bottom went inside some bolts to hold it.

Q They were not strong enough so that if a person was thrown with his feet against the bottom of it to withstand the pressure?

A It was never put in there for a guard.

Q It wasn't strong enough for that purpose?

A Yes.

Q And you knew it?

A Yes.

Q And the inspectors could have seen it?

A Yes, they could have seen it as well as I could, it was put in there for a splash pan.

Q Did you or did you not, prior to the accident, know that the bottom of the guard or splash pan was not fastened?

A No, I did not.

Q You could see that there were no bolts fastening on the columns?

A No, I did not know it.

Q Then how did you know it was in the same condition every time they inspected it as when Iver was injured?

A The plate had not been moved, it must have been.

Q But you don't know of your own personal knowledge?

A Yes, I do, I could see it was in exactly the same position by the marks on the plates and everything where they pressed up against it.

Q You say that the oil would collect in the bot-

tom of this crank pit and be thrown over the engine room, and the purpose of the guard was to keep it from being thrown that way?

A Yes sir.

Q Wasn't there a hole in the bottom of the crank pit?

A Yes, there is generally a hole.

Q For the purpose of running the oil off?

A Sometimes it doesn't run off, sometimes it gets stopped up and the oil collects.

Q Did you ever know of oil collecting in the bottom of the Argo?

A Yes, it does all the time.

Q You say you don't know of a tug on the Sound that has its crank pit higher than the floor of the deck?

A I would have considerable trouble finding one.

Q Are you familiar with the tug Resolute?

A I don't think I was ever on it.

Q The Mystic?

A Yes. I think the crank pits on the Mystic are lower than the floor.

Q What other tugs?

A The Active's is below the floor.

Q The Active's is below the floor, but you have a good, strong guard there, haven't you?

A Yes sir.

Q What boat on the Sound—

A I couldn't tell you.

Q What boat on the Sound of the type of the Argo that has its crank pit—

A The bottom of the crank pit?

Q Yes, the bottom of the crank pit below the floor, is there that has not a guard around it, some sort of guard around it?

A They all have pans the same as the Argo had, if you call that a guard. I call a rail a guard.

Q You said some of the boats used canvas?

A I have seen one boat, and I have seen a piece of tin just hung there.

Q Do you know of any such boat now?

A Yes, there is one on Lake Washington.

Q A tug?

A Yes, and passenger boat.

Q What boat is that?

A I think it is the Fortuna, just a piece of tin hung up, the wind blowing it backwards and forwards, just a thin light piece of tin suspended in the air.

Q You are sure of that about the Fortuna?

A I am certain of it.

Q When did you see this boat?

A Very lately.

Q You went on purpose to see if you could find a guard like that?

A Yes.

Q Did you go over the Sound to find out whether there was any tug there?

A I went on some boats, yes sir.

Q And then you finally went to Lake Washington, and you found one there?

A Yes, there are several boats there in the same condition.

Q You didn't find any, did you, except the Fortuna?

A Yes, there are other boats. I am speaking that the Fortuna had a piece of tin just suspended there.

Q How long have you been trying to find boats that did not have guards?

A A very short time.

Q How long?

A I don't suppose I put in three hours, altogether.

Q It would take nearly that long to go to Lake Washington and back.

A No.

Q How long on the Sound?

A I can not say, a very short time, but I can name boats on the Sound that haven't anything at all. The Prosper has not even a splash pan, no hand rails, or anything.

Q Who owns the Prosper?

A She is owned by the Puget Sound Tow Boat Company.

Q Is the bottom of the crank pit on the Prosper lower than the floor of the deck?

A Yes, I think so.

Q Is the top of the crank pit, is that lower than the floor?

A The crank pit has no top, it is just an open space that the shaft revolves in.

Q In some places they are set up on a platform, are they not?

A A crank pit, Mister, is just a hole for the shaft to revolve in, it has no top, there it a bottom, but no top.

Q What other tug that has no guard at all?

A Seattle Spirit.

Q Is that a tug boat?

A Freight boat.

Q That has no splash pan or anything?

A I don't think so.

Q Is that the same type as the Argo?

A No.

Q No other?

A I can not remember, but I have seen several of them.

Q Now, without a guard of some kind there, if the crank pit is lower than the floor, what is there to prevent a seaman from being thrown into the crank pit?

A There are columns there to catch on to.

Q How wide? How far apart are the columns?

A About eighteen or twenty-one inches in the Argo.

Q You think that is a sufficient guard?

A Yes sir.

Q That is your idea of a guard, that is really not a sufficient guard?

A I think if it were not the inspectors would put guards there.

## RE-DIRECT EXAMINATION.

BY MR. BYERS:

Q What about the boats of the Everett Tow Boat Company, say whether or not they are constructed the same as the Argo engine room was.

A The American Tow Boat Company?

Q Yes sir.

A Yes, their engines are practically on the same order.

Q And what about Buley's boats over in Tacoma?

A Same type, nearly, of course, there is always some change more or less.

Q Just the changes rendered necessary and convenient by the difference in the size of the boat?

A Exactly.

Q In all your experience have you ever known of a guard being put up to prevent a fireman from getting his feet into a crank shaft, a guard constructed for that purpose?

A No. There may be a guard there, but for that specially, no.

BY MR. HALL: Q What is a guard there for if there is a guard there?

A I don't know why.

BY MR. BYERS: Q On some boats where there is a very large space like in some of the larger boats, it might be necessary?

A Yes, then they have guards or hand rails.

Q Did you ever hear, Mr. Studdert of a man sticking his foot into the crank pit?

A No.

BY MR. HALL: We move to strike the question and answer as being incompetent and immaterial as to what he has heard.

BY MR. BYERS:

Q In your eighteen years experience as engineer has any such accident, or similar accident to this happened, such as to call the attention of an engineer to the fact that such could happen on a boat of this character and type?

A No sir.

BY MR. HALL:

Q Did you ever know of a man getting into a crank and being injured before?

A Not that I can remember.

Q During your eighteen years of experience you never heard of a man getting into the crank pit and being injured?

A No sir.

Q You lead us to believe that you are familiar with the tug boats of the American Tow Boat Company?

A I said they were similar.

Q Well, are you familiar with them?

A No.

Q Have you been on them?

A Yes sir.

Q Have you inspected their crank pits and engine rooms?

A No sir, not any more than I have been on them, not to give them an inspection.

Q Have they any guards, or splash pans on them?

(No answer. Argument by Counsel)

BY MR. HALL:

Q You know they are the same size, or practically the same size?

A They are on the same order.

Q Is that all you know about them?

A That is all.

Q You don't know anything about their crank pits or guards or any thing else?

A No, not that I could swear to.

HOWARD B. LOVEJOY, produced as a witness on behalf of the Petitioner, being first duly sworn, on oath testified as follows:

#### DIRECT EXAMINATION.

BY MR. BYERS:

Q State your name, Captain.

A Howard B. Lovejoy.

Q How long have you resided in this State?

A First came here when I was a year old.

Q Where have you resided?

A In Seattle for about ten years.

Q How long have you been in the steamboat business?

A I started when I was sixteen years old.

Q Have you been engaged in the building and operation of boats since that time?

A Practically, yes sir.



Q What boats have you built?

A Personally, I built about a half a dozen.

Q What are they? Their names?

BY MR. FULTON: We will admit his qualifications as an expert.

Q Are you familiar with a vessel here known as the tug Argo?

A Seen her, yes sir.

Q Are you familiar with her engine?

A Familiar with the ordinary fore and aft compound engine.

Q You are a licensed master of steam vessels?

A Yes sir.

Q And have installed engines of this character?

A Yes sir.

Q I would ask you if the engine in the Argo is installed in substantially the same manner as in all other vessels of the type of the Argo?

A I think so, yes.

Q I call your attention, Captain, to that part or fixture on this engine known as a splash guard. I would ask if you are familiar with that appliance or appurtenance?

A Yes sir.

Q What is its purpose, if you know?

A It keeps the oil from splashing out on the floor.

Q What causes that oil to splash out?

A Revolving of the engines and drippings from the steam.

Q I will ask you to state whether or not that

pan or guard is intended by engine builders and steamboat men to keep firemen or engineers to keep their feet from slipping into the crank pit?

BY MR. HALL: We object to the question as incompetent, irrelevant and immaterial and as leading.

A Why, I never heard of it being put on there for anything else other than a splash board.

### CROSS EXAMINATION.

BY MR. HALL:

Q Captain, how is the engine installed in the Argo?

A Right into details, I could not tell you.

Q When did you examine it?

A I was aboard the boat the other day.

Q How long were you aboard of her?

A About half an hour.

Q Is that the only time?

A I was aboard the boat when she was building, but did not go into any of the details at that time.

Q You do not know as a matter of fact just how the engine is installed there, only in a general way?

A Yes sir. There is only one way to install an engine though.

Q Do you know whether the crank pit is lower than the floor?

A The crank pit is lower than the floor.

Q How much lower?

A I should think about probably fourteen inches.

You have to have room in the pit to swing your cranks.

Q About fourteen inches?

A I have an idea that the bed is about fourteen inches.

Q Do you know how wide the standards are apart?

A I think about two feet.

Q Did you examine this guard that was on there?

A Not particularly.

Q You saw it?

A Yes, a piece of galvanized iron.

Q Do you remember how wide the passage way is around this crank pit?

A I think about three feet, about that, that is outside of the columns.

Q Have you had considerable experience with guards or with tugs?

A I have had considerable experience with those kind of boats, have built three or four, and manager and owner of some.

Q Did you ever see a tug of the class of the Argo with a guard around her crank pit to keep the men from being thrown in there?

A I never did, no sir. We have one boat with an engine very nearly like the Argo's.

Q What is the name of the boat?

A That we have? The Camano.

Q Have you splash guards on the Camano?

A Yes sir.

Q What are they made of?

A Piece of galvanized iron.

Q How thick?

A Very light iron, about one-sixteenth.

Q Where is it fastened with reference to outside or inside of the columns?

A I don't really know which side, whether it is outside or inside, I know one of our boats was inside the columns. If you set it on the outside it lets all the oil drip, for that reason it was put on the inside of the columns.

Q Was that guard fastened at the top and bottom to the standards?

A Yes sir, it was fastened. Oh, they are not fastened very securely because they lift them off frequently.

Q How was this fastened?

A On the Camano?

Q Yes.

A Well, I think on the Camano it had a bolt there around the column coming through.

Q U-bolt at the top and bottom?

A I don't think there is any on the bottom.

Q But on the Camano you think it is on the inside?

A No, I believe it is on the outside, but on one of our boats it is on the inside.

Q Do you know whether or not the one that is on the outside (by outside you mean the side toward the columns?)

A No, I mean the side towards the passage way.

Q If you have a guard that is toward the pass-

age way, is that fastened at the bottom and at the top to the columns?

A No, it wouldn't be necessary to fasten it at the bottom if it is outside.

Q But if they are on the inside, that is toward the cranks, then they are fastened at the bottom?

A They have to be held some way there.

Q Why would it be necessary to have them fastened at the bottom?

A If your column sat that way (indicating) and your bolt was in here (indicating) it would go against the column.

Q What protection do you have on that class of tugs to keep the seamen or men employed on the boat using that passage way in a heavy sea from being thrown into the crank pit or slipping or falling in?

A So far as I know we never had any for that particular purpose.

Q The crank pit on the Camano or your other tugs, is that lower than the passage way?

A The bed is lower.

Q How much lower?

A Probably ten inches lower.

Q Is the pit lower?

A No, the pit is not lower.

Q Is it higher?

A The pit is higher on both our boats.

Q That is where it differs from the Argo?

A Yes sir.

Q If the pit were lower on a boat like the Argo,

in your opinion, would that not call for some sort of a guard to keep from slipping in there?

A I should not think it was necessary.

Q Now, if a guard is put on the outside as you call it, that is toward the passage way, and made of sheet iron fastened at the top, it serves as a guard anyway as to anybody's feet slipping in there?

A But it would not—it is light iron, it would not be heavy enough to stand very much weight against it.

Q But if it were on the inside of, that is toward the crank pit, and were not fastened at the bottom it would not serve as a guard to keep a man's feet from slipping in there?

A Sometimes. I think on that boat the columns are bolted down on the bed, the heads of the bolts stick up, and they could drop it between the heads of the bolts.

Q That would hold it in place?

A Yes.

Q And if anybody's feet went against there, it would tend to check its progress and stop him, would it?

A Certainly.

Q In your opinion, if the guard is on the inside, towards the cranks, and is not fastened at the bottom, either by putting it between the bolt heads, as you say, or fasten it with U-bolts, is that not dangerous to anybody working around there?

A There is absolutely no machinery on the boat that is not dangerous, if you get mixed up with it.

Q I refer specifically to this.

A I would not think so to a man who is used to the engine, anybody, in fact, is supposed to keep clear of the moving machinery.

Q Yes, but if you had a guard up there of sheet iron and it looked all right, you would consider that it was not so dangerous, wouldn't that put you off your guard and lead you to believe that precaution had been taken?

A I hardly think so, a man could know at a glance that a piece of an eighteenth inch iron is not very substantial.

Q What if this was one-sixteenth?

A Well, it is not very strong stuff at that.

Q If the man who built the boat testified that he recognized that a guard was in there to keep a man from being thrown in the crank pit, and he had this guard constructed and put there, you would say in that event that it was a guard and not a splash pan, wouldn't you?

A Well, if that was his evidence, yes sir. That is something I never had come up to me in that way.

Q All your guards are of sheet iron?

A Yes sir, of light sheet iron.

Q And are on the outside, towards the passage way, or inside toward the cranks, and fastened at the tops and bottoms?

A Generally fastened with temporary fastening that can be undone very easily, because they lift them off occasionally.

## RE-DIRECT EXAMINATION.

BY MR. BYERS:

Q State, if you know, the general purposes for which these guards or pans are put upon engines?

A I never heard of them being put in there other than to keep the oil from splashing.

## RE-CROSS EXAMINATION.

BY MR. HALL:

Q If that is true, why are they not made of other material?

A It is heavy, and about the most economical way you can fix them.

Q If you had a guard on these vessels made of substantial iron, fastened at the top and bottom, it would be impossible for a man's foot to get through there.

A I don't think there is any question about that.

Q And you would say, would you not, that if such a guard was put there that it would be safer for the men using the passage way?

A Yes sir.

BY MR. FULTON:

Q What company are you connected with?

A Inland Navigation Company.

Q Are you stockholder in that company?

A Yes sir.

Q And one of the directors or officers of the company?

A Yes sir.



Q And an operator of boats?

A Yes sir.

BY MR. HALL:

Q What is the name of your other tug?

A These are passenger boats, the Camano and Calista.

Q The part of the boat the passengers occupy,—do they use the passage way?

A No, just the employees.

Q Have you any tugs?

A No, we have no tugs.

BY MR. BYERS:

Q Are these engines installed substantially in the same manner as these tugs?

A Practically, yes sir.

Q Would the fact that that part should be put there in a way so as to keep a man from actually falling in, would that prevent him from getting hurt by that engine?

A No, not at all.

H. RAMWELL, produced as a witness on behalf of the petitioner, being first duly sworn, on oath testified as follows:

#### DIRECT EXAMINATION.

BY MR. BYERS:

Q State your name.

A H. Ramwell.

Q Where do you reside?

A Everett.

Q How long have you resided at Everett?

A Eleven years.

Q What is your position there, what business?

A Manager of the American Tug Boat Company.

Q Are you a licensed Master of steam vessels?

A Yes sir.

Q How long?

A Twenty years.

Q Have you built, operated and had charge of tugs of the same class and kind of the Argo?

A Yes sir. We have one just a sister ship to her. You can hardly tell them apart.

Q What is the name?

A The Irene.

Q Have you been actively engaged in and about these tugs for the last ten years?

A Yes sir.

Q Are you acquainted with that appurtenance or appliance to an engine known as a splash guard?

A Yes sir.

Q Is it customary for a guard to be constructed around and about the columns of any engine to keep firemen from getting their feet into the crank shafts?

A No sir.

Q For what purpose is this pan or guard placed there?

A To keep the oil from splashing out of the crank pit.

Q Is it put there or intended for the purpose of

keeping firemen from getting their feet into the crank pit?

A That is not the intention.

Q How many boats of practically the same kind as the Argo have you?

A We have eleven boats and tugs.

Q And operating them steadily.

A Yes sir.

### CROSS EXAMINATION.

BY MR. HALL:

Q Are you familiar with the tug Argo?

A Yes sir.

A Been aboard of her?

A Yes sir.

Q When?

A O, fifty times.

Q You say you are the manager of what company?

A American Tug Boat Company.

Q You have a sister tug to the Argo called the—

A Irene, yes sir, she is the same, has the same engine, you can hardly tell them apart.

Q Is the crank pit and bed plate in the same position?

A Yes sir, exactly.

Q How much lower is that than the passage way?

A Do you mean on the Irene?

Q Yes.

A How much lower is the crank pit?

Q Yes, the bed plate.

A I should judge just about 12 or 14 inches.

Q Describe your splash guard on the Irene?

A That I can not do, we sometimes have a piece of canvas there.

Q What have you now?

A Well, I don't know.

Q When did you last see the Irene?

A About two days ago, I have so many I don't pay any attention to them.

Q Have you any that have sheet iron?

A Yes sir.

Q Are they placed on the inside or outside?

A That depends on the style of the engine, mostly on the inside.

Q That is towards the columns?

A That is inside the columns some of them have nothing but canvas.

Q Well those that you have of canvas, is the bed plate in the same position as on the Argo?

A Yes sir, just exactly the same.

Q Did you superintend the building of the tug Irene?

A No sir, I bought her.

Q Did you buy her from the builder?

A No sir.

Q Who built the Irene?

A That I don't know. Hefferman built the engine. She was built in Tacoma.

Q Whose duty in your company is it to see that things are safe around the tugs?

A I go around myself.

Q It is your duty then as manager to see that they are properly equipped?

A Yes, I do, I took to that myself. I have other men that do the same thing though.

Q Do you know then that part of your tugs with engines in the same position as the Argo practically, are without any guards whatsoever around the passage way?

A Except as a splash pan. If you put anything stronger than that the chances are they will crawl on top of it.

Q Who would?

A Anybody that works around it.

Q Doesn't this guard, that you say is made out of canvas, that affords no protection to the seamen?

A They don't need any protection. It is once in a great while a man will get his feet in a crank shaft.

Q Once is enough if he gets it in there. Did you never have a man injured in the crank shaft?

A Yes sir, he crawled on the top of the board, too, when he did it.

Q You don't mean to say that a pit with a guard such as you say you have on your tugs is as safe for the men to work around as one made of sheet iron of sufficient strength, well bolted to the standards?

A You have to keep taking them up all the time.

Q Answer my question. You don't think it is as safe for the men working around there?

A You can fix it all up so they could not get—

Q Is it as safe to have, as you claim you have, nothing but a piece of canvas, is that as safe as to have a guard of sheet iron of sufficient strength well bolted to the standards?

A No, of course it isn't.

Q You know as a matter of fact that these tugs are in heavy seas?

A Very seldom the Argo goes into heavy sea.

Q You know they are called out on heavy seas?

A No, I do not know.

Q You know it gets rough on the Sound?

A Yes sir.

Q That the boat rolls, do you?

A Yes sir.

Q You know that if a man is engaged on that passage way and the boat rolls that he stands a chance of slipping and his feet going the crank shafts?

A No, because if he is—

Q You know it is possible to be thrown in there?

A Sure, it is possible.

Q You know if we had a guard such as I described—

A It would not be practical.

Q You mean to say that you could not put a guard there?

A You seem to forget, you think the engine is put there to look at. The engine has to be oiled, the engineer has to get at it, has to get near it, if you box it up how is he going to get at it?

Q To go back to this guard that is there bolted on to the columns, it is a permanent fixture there, is it?

A No, it is not.

Q Do you say with a U-bolt it could be taken off handily?

A Yes sir.

Q You could take off a heavy guard that is fastened with a U-bolt just as readily as you could a light one?

A Sure you can.

Q Suppose he recognize the fact that there should be a guard there and he put it there for that purpose, would not you say then it was there for the purpose of a guard?

A I never saw one put—

Q Answer my question, wouldn't it be?

BY MR. BYERS: I submit it is not a proper question.

Q If the man testified that he had put it there to serve as a guard to keep the men's feet from slipping into the crank pit; that it was not safe without it, then you would say it was put there as a guard?

A Yes sir.

Q You would say further that if a guard was put there, a sheet iron guard, for the purpose of serving as a guard, and if it was put on the inside toward the cranks and fastened at the top to the standard by U-bolts, but not fastened at the bottom, then it wouldn't be a sufficient guard?

A Yes sir, because it might be slipped back of one of the nuts.

Q If it were not fastened at the bottom at all?

A It would not act as a guard or keep a man from falling in.

BY MR. BYERS: I submit, if Your Honor please, what he said it was put there for, and what it was put there for are two different questions.

A I don't know what he said it was put there for. If no one told me what it was put there for, I would naturally say it was put there for a splash pan.

Q Yes, and if the owner said it was for a guard, you would say it was for a guard?

A Yes, sure I would.

Q And if it wasn't fastened at the bottom, you would say it wasn't?

A That might be true, yes sir.

Q Did you say you have never seen a tug with a guard other than you described?

A What do you mean by that?

Q I mean did you never see a tug with any other guard except one that is used—

A But I have seen lots of them. Yes sir, we have some with boards on the outside, we have some with canvas, and usually the engineer himself puts something up to keep the oil from splashing.

Q To the best of your experience as a sea faring man, would you not say that it would be safer for an employee using that passage way to have substantial guard there than to have no guard there at all?

A No, I would not want to say that; I think that



you could box it up so that a man could not get into it, then it would be protected, but we had one man who crawled on the top of it.

Q I asked you if you would not consider it safer if this guard were made of strong enough sheet iron and fastened securely to the standard, would not that make it safer?

A Sure it would.

Q Are you interested in the Pacific Tow Boat Company?

A Not a dollar.

Q Are you acquainted with the officers?

A Know them, yes sir.

Q Have you any business with them?

A Not to the extent of a dollar. I did not know of the case until ten minutes before I came here.

Q If there were guards made of sheet iron fastened to the inside of the standards or columns and not fastened at the bottom, wouldn't that have a tendency in case any employee's feet should get against that guard and press it in towards the crank pit, to catch the employee's feet and keep him from withdrawing them from the crank pit?

A Put that again please?

Q In case—if there were a guard of sheet iron fastened on the inside of the columns at the top, but not fastened at the bottom and an employee's foot should get against there, the bottom of it, and the guard gave way, wouldn't that have a tendency to prevent him from pulling his foot out again?

A No, I don't think so.

Q Why not?

A What would it catch?

Q Wouldn't the bottom of the guard after his foot had gone in there and pressed the guard out, wouldn't that serve as a catch?

A Yes, if he got it underneath, it would.

BY MR. FULTON:

Q A piece of sheet iron fastened on the inside of the columns with U-bolts and only fastened at the top and not at the bottom wouldn't serve as a guard at all, would it?

A No.

Q It would be absolutely no protection, whatever?

A I don't think so, no.

Q If it were fastened at the top and not at the bottom, and fastened on the inside, it would be no guard at all?

A If you put heavy boiler iron and fastened it at the top he couldn't get his foot in then, but this thin sheet iron is only flimsy stuff.

Q And if it were fastened at the bottom, then it would serve as a protection?

A I think it would be just the same.

#### RE-DIRECT EXAMINATION.

BY MR. BYERS:

Q In regard to the statement of the manager of the company, I call your attention to that, if you heard the statement by the manager of the company that this was put here for a guard to keep the em-

ployees from getting their feet in there, after he had been displaced as manager and had been discharged as manager of the company and then called in as a witness for a claimant in damages of a case like this, then what would be your opinion?

BY MR. FULTON: We object to that question as wholly incompetent and not proper re-direct examination, and calling for conclusion of the witness upon the credibility of the witness which the court must pass upon.

BY MR. BYERS:

Q I would ask you to state then whether or not it would be your opinion that it was placed there as a guard?

BY MR. FULTON: Same objection.

A I don't think it was intended as a guard, because if he wanted to keep somebody from falling in he would put something stronger there for a guard.

HOWARD B. LOVEJOY, recalled as witness on behalf of the petitioner, testified as follows:

#### DIRECT EXAMINATION.

BY MR. BYERS:

Q Have you noticed other vessels of this kind and type with regard to the different ways in which their splash pans were constructed and of the different materials of which they were constructed?

A I do not recall any particular ones. I know on one we had a board, tongue and grooved stuff.

Q Have you ever seen any made out of canvas?

A I have seen them, but I could not say when or where.

Q Have you seen them made out of tin?

A No.

Q Have you ever seen the Fortuna, or the Zanthus or Atlanta?

A I've been aboard all of them, yes sir, but never noticed this particular feature.

CAPTAIN JOHN L. ANDERSON, produced as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

BY MR. BYERS:

Q State your name.

A John L. Anderson.

Q How long have you resided at Seattle, Captain Anderson?

A About twenty-two years.

Q What is your business?

A Steamboat business.

Q How long have you been in that business?

A Well, all the time.

Q For the past twenty-two years?

A Yes sir.

Q Are you managing and operating steamboats at the present time?

A Yes sir.

Q Where?

A On Lake Washington.

Q How many?

A Eight boats.

Q Have you built steamboats?

A Yes sir.

Q Have you built steamboats of about the size approximately of the tug Argo?

A Yes sir.

Q Have you seen the tug Argo?

A Yes.

Q Have you examined her engines?

A Yes sir.

Q How long have you been engaged in the building and installation of engines in boats?

A For the last nineteen years.

Q State, Captain, whether or not the engine in the Argo is installed in approximately and practically the same way as all other vessels of her type and class?

A Yes, practically the same way as any other boat of her type.

Q Are you acquainted with what is known as a fore and aft compound engine?

A Yes sir.

Q Is that the kind of engine in the Argo?

A Yes sir.

Q Are you acquainted with the appliance made out of tin or canvas or board or of galvanized iron, that is hung or attached to each side of an engine, or around the crank pit?

A Yes sir.

Q State what that is, and what is it put there for?

A My experience, and the way I have done it, is to put iron, a sheet of iron, about one-sixteenth iron, or perhaps some metal of that kind for protecting the oil from splashing over on the engine room.

Q Is it intended by builders and operators of boats that that is to be a guard to prevent firemen from slipping their feet into the crank pit?

A No sir.

BY MR. HALL: We object to the question as incompetent, irrelevant and immaterial as to what the contrivance he describes is intended for in other boats.

Q Now, tell, Captain, how these appliances which you state are placed there for the purpose of preventing the oil from splashing, tell in what different ways they are installed on boats.

A Well sir, I always put them on the inside of the columns for the purpose of preventing oil from going over the frame, if you put them on the outside, the oil would still run out on the engine room and the floor.

#### CROSS EXAMINATION.

BY MR. HALL:

Q Captain Anderson, when did you say you saw the Argo, approximately, about one or two months ago?

A Sometime ago, I can't exactly remember.

Q Was it a month ago?

A Two months, probably.

Q Were you aboard of the Argo?

A Yes sir.

Q How long, at that time?

A I can not say exactly, probably half an hour.

Q She was lying at the docks?

A Yes.

Q You have been in the steamboat business twenty-two years?

A Yes sir.

Q Have you been engaged in the steamboat business in any other place besides Lake Washington?

A Yes, on Puget Sound?

Q How much experience on Puget Sound?

A Before I went on the Lake I was on some boats on the Alaska run, and I also ran to Frisco, and I put in some time on tow boats, the Queen City for one.

Q What work were you doing?

A Fireman, on the Queen City.

Q Have you Master's papers?

A Yes sir.

Q Did you get them on the Sound?

A No, I had Mate's license then.

Q How long have you been exclusively on the Lake?

A I have been there just twenty-one years.

Q On the lake twenty-one years?

A Yes sir.

Q Then your experience on the Sound was before that?

A Yes sir. After that I bought the Inland Flyer, I was up in Bellingham about six months out of that time.

Q Now, Captain, you say that the Argo is fitted out and built practically the same as all other vessels of her class?

A Yes sir.

Q What do you mean by that?

A By the engine, more particularly, as a rule they always have a boat built so that they fit in the bottom of the boat for the purpose of getting more power in towing.

Q That makes them a little lower in the crank pit?

A Than on passenger vessels, yes sir.

Q Do you have tugs on Lake Washington?

A I have had some.

Q You are not operating them now?

A No sir.

Q Mr. Byers, in describing this guard or splash pan, as he calls it, described it as sheet iron or tin, or iron, which is it on the Argo?

A I think it is one-sixteenth iron.

Q How is it fastened on the Argo?

A It was fastened on the inside of the columns when I saw it.

Q On the inside of the columns, which way was that?

A Toward the engine, it was fastened on the inside.



Q Was it fastened at the top and bottom, do you know?

A It was fastened at the top.

Q But not fastened at the bottom?

A It stands behind some studs so that they can slip it off quickly.

Q Well, you are quite positive that it was on the inside toward the cranks?

A Yes sir.

Q Were you ever on a tug or vessel of the class of the Argo that had guards up for the prevention of people or the workmen being thrown or falling into the crank pit.

A On the old Queen City she had an open column, we had a board on the side there to prevent the oil so you would not slip on it.

Q Was that a guard?

A No, it was intended for a splash pan.

Q It was intended for a guard also, wasn't it?

A I don't think so, because it was on the inside of the columns.

Q You never saw a boat with a guard around the crank pit?

A Not for guard purposes.

Q You put that always on the inside?

A I have three or four fore and aft compound engines myself; they are always on the inside of the columns.

Q Made of what?

A Iron.

Q What thickness?

A One-sixteenth; some of them thinner than that.

Q How are they fastened?

A By coupling going over the stanches, some drilled into the stanch and secured on the columns.

Q At the top and bottom?

A Yes sir.

Q Have you any guards on your boats fastened at the top but not fastened at the bottom, so when you put your foot against it it gives away?

A We have bolts on this way. (Indicating). We have the iron fitted so they go inside of the studs.

Q That serves as a brace, does it not, to keep it from going in, does it not?

A Yes sir.

Q You recognize the fact, do you not Captain, that it would require different equipment on the Sound where they get heavier weather than on the Lake?

A That is probable. We get heavy weather on the Lake.

Q Nothing compared with what it is on the Sound?

A Not always. Probably not.

Q Did you ever build a tug like the Argo?

A Why they have one of my old boats, one that I built.

Q If this sheet iron were fastened securely at the top and were fastened securely at the bottom, that would make a guard of it, wouldn't it, it would serve the purpose of a guard, would it not?

A It probably would.

Q If the man who built the tug testified that he put this guard there, ordered the guard put there for the purpose of preventing the men from slipping or falling into the crank pit, you would say it was a guard?

A No, I would not say so, I would say that the man did not know his business if he put it there for a guard.

Q What would he put there?

A Iron, about one-fourth of an inch thick and bolted well to the columns.

Q You would consider that a piece of sheet iron of the thickness of the guard that you saw on the Argo which was fastened at the top, but not fastened at the bottom, and was on the inside of the columns, would you say that that was a proper guard for the purpose of preventing the employees from slipping in or being thrown in?

A Well, I would say that it was not intended for a guard.

Q I did not ask you what it was intended for. If it was intended as a guard for the purposes that I have mentioned, would you say that it was a proper guard?

A No, it would not.

Q It would not be safe for the men around there?

A It depends on how you fix that. Naturally it is not intended for that purpose.

Q You would not say it was a proper guard?

A If it was put there for a guard it would be a foolish thing to have there.

Q It would be a negligent thing to do, would it not?

A If it was intended for that purpose.

Q Now, Captain, I will ask you this, supposing that there was a piece of sheet iron, one-sixteenth of an inch thick, fastened on the inside of the columns at the top by U-bolts on either side, but not fastened at the bottom, wouldn't that act as a sort of a trap to catch a person's foot if it was thrown against there, and when he pushed it would it not tend to catch and hold the foot in there and prevent the person from pulling it back?

A Why, I don't hardly think so, the iron is so light.

Q You couldn't pull it out as easily as if there were nothing at all there?

A Yes, because the iron is not fastened on both ends. It would be very weak and you could pull and it would stretch.

Q How could it stretch when it is fastened? It is fastened at the top, but not fastened at the bottom, it would have the same effect as closing a door on a person's foot or arm, you couldn't pull it through, pull it back?

A It would not have the same effect, one-sixteenth iron is much lighter.

Q It would tend to hold the foot to some extent, would it not?

A Well, I don't see how it could.

Q Do you understand what I am trying to get at?

A Yes sir, (indicating) the iron is here, and if you slip in, you say it would hold your foot. That depends on what position he slipped in.

Q Well, if he was walking in the passage way, and his foot slipped in there in that position?

A Well, I will tell you as a matter of fact, that the engine on that boat is better guarded than some engines, because it has a reverse shaft—

Q Just a minute. I want to know if that would not prevent you from pulling your foot out as readily as if there were none there at all?

A I don't see that it could.

Q If they had a guard on there of sheet iron fastened on the inside at the top and not fastened at the bottom, and a man should slip and his foot went through under the guard, pushing the lower part of the guard away, his foot getting into the crank pit and bruising the foot and leg so that the leg had to be amputated below the knee, that immediately afterwards, or in a week or two, the guard was changed to the outside and fastened at the top and bottom, would not that be an indication to you that it was intended as a guard instead of a splash pan?

BY MR. BYERS: We object to that question because it is improper cross examination; because the answer thereto would be immaterial, incompetent and irrelevant upon the ground and for the reason that anything that was done to this boat after the

accident or any change that is made is immaterial, incompetent and irrelevant and inadmissible.

A Well, I can't figure out what that was done for, I have no idea.

Q You say that a splash guard is always on the inside. If it were placed on the outside it would be meant for something else than a guard?

A Just changed it for some other idea.

Q In your experience it would not serve the purpose of a splash guard on the outside as well as on the inside?

A No sir.

Q Then it must have been used for some other purpose than a splash guard if it was placed on the outside?

A Well, I have run engines without any splash guards at all in them.

Q If it were on the outside, then of necessity it would have some other purpose than a splash guard?

A It depends on what the engineer wanted to put it there for.

Q What would he be apt to put it there for if he placed it on the outside?

A I don't know.

Q He wouldn't use it there for a splash guard, would he?

A It would keep the oil from splashing on the floor just the same.

Q Yes, but not so well as it would on the inside?

A No sir.

Q It would serve better as a guard on the outside than the inside?

A Yes, it would be stronger.

Q You are still with the Anderson Steamboat Company?

A Yes sir.

### RE-DIRECT EXAMINATION.

BY MR. BYERS:

Q Captain, would it be possible for a man to put his foot into a crank pit, if there wasn't any guard there? Would it be possible for him to put his foot where the piston was revolving at the rate of 120 revolutions a minute, making the counter-balance together with the crank going through there at the rate of 240 revolutions a minute; would it be possible for him to put his foot in there and draw it out again without getting injured?

A No, I can't see how it could be possible.

Q Is it practical to put a permanent guard around these engines?

A No sir.

Q State why it is not practical?

A The reason of it is that they must be taken up frequently to adjust the motion of the cranks.

### RE-CROSS EXAMINATION.

BY MR. HALL:

Q Do you mean to say that it is not practical to put a guard around this place?

A Yes sir, it is practical all right, but you must

have it so that you can take it down and repair and fix your engine.

Q If you were trying to put a guard there to keep people from falling in, you could do it all right?

A It can be done, but it has to be fixed so that you can take it down easily.

Q You could put one in there you could take down?

A Yes.

Q They have to take the splash guard down, don't they?

A Yes sir.

Q If it was fastened with U-bolts at the top as that is fastened, it is considerable trouble to take that away, isn't it?

A Not very much.

Q A guard could be constructed in the same manner, couldn't it?

A Not as easily as that, no.

Q You could make one, all right, that would serve the purpose of a guard and still could be removed?

A I suppose it could be done.

Q Would it be much harder to remove this guard on the Argo if it were fastened on the bottom too?

A It takes a lot more time.

Q How much longer?

A It would take twice as long.

Q That would not be difficult to do, it would not take an unusual amount of time, would it?

A Well, they are mostly all put in that way.



Q But there is generally something to prevent them from being pushed out at the bottom, as in your boats?

A Yes sir.

#### RE-DIRECT EXAMINATION.

BY MR. BYERS:

Q Is it practical to make an engine safe by boxing it up?

A Yes.

Q Is it possible to make an engine absolutely safe to work around?

A An engine can not be made absolutely safe when running.

Q Is it, or is it not possible for anyone who is careful and taking care to keep from putting his foot into the crank shaft with equipment like there is in this boat, the Argo?

A Certainly. I have been trying to figure out how this man got in there.

#### RE-CROSS EXAMINATION.

BY MR. HALL:

Q You don't know how he got in there?

A No.

Q You don't know the facts connected with this accident?

A No sir.

Q Except that you inspected the boat here of late?

A That is it.

IVER NORDSTROM, Recalled as witness on behalf of the Petitioner testified as follows:

BY MR. BYERS:

Q You now have a cork foot, Iver?

A Yes sir.

BY MR. HALL:

Q Iver, are you able to wear that cork foot all of the time?

BY MR. BYERS: We object to that and move to strike it because it is not proper cross examination.

A No.

Q Explain why you are not able to wear it all the time?

BY MR. BYERS: We object to this because it is not proper cross examination, and for the reason that witness is a hostile witness.

A I am not able to wear it because I was so badly smashed up the skin has not grown back over the smashed place.

Q Does it cause you pain when you wear it?

BY MR. BYERS: We object to this because it is not proper cross examination, nothing of that kind having been asked of the witness, unless counsel makes this witness his own.

A Yes sir, it does.

Q How much of the time are you able to wear it?

BY MR. BYERS: We object to this because it is improper cross examination, nothing having been asked the witness in chief how he wore it, and witness being a hostile and adverse witness.

Q Does it cause you pain, and how much of the time are you able to wear this cork leg?

BY MR. BYERS: We object to the question because it is improper cross examination, and because witness is a hostile and adverse witness.

A I can wear it about six or seven hours a day, but have to rest the leg a couple of days afterwards.

Q What do you use when you are not able to wear the cork leg?

BY MR. BYERS: We object to this question for the same reasons heretofore assigned.

A I wear crutches.

SEPTEMBER 25, 1912, 2 O'CLOCK P. M.

JAMES F. PRIMROSE, produced a witness in behalf of the petitioner, being first duly sworn, on oath testified as follows:

#### DIRECT EXAMINATION.

BY MR. BYERS:

Q State your name.

A James F. Primrose.

Q Where do you reside?

A Seattle.

Q How long have you resided here?

A Eleven years.

Q What is your business?

A Superintending engineer Puget Sound Tow Boat Company.

Q How long have you been Superintending Engineer?

A Eleven years.

Q How long have you been licensed engineer?

A Twenty-six years.

Q What is the Puget Sound Tow Boat Company, how much of a company is it?

A They own ten boats.

Q It is the principal towing company on Puget Sound?

A Yes, they do most of the towing.

Q You are its port engineer, are you?

A Yes sir.

Q As such engineer, are you familiar with the installation of engines in tug boats?

A Yes sir.

Q Have you seen the tug Argo, belonging to the Pacific Tow Boat Company?

A The Argo? I have seen her, yes sir.

Q I would ask you to state whether or not you are familiar with the fore and aft compound engine?

A Yes sir.

Q Is the engine in the Argo installed practically the same as all other boats of her type and class?

A Practically, yes.

Q Are you familiar with the appliance and appurtenance of this kind known as the splash guard?

A Yes sir.

Q Are you familiar with the one on the Argo?

A Why, I have seen it.

Q State what is the purpose of that appurtenance?

A That is installed for the purpose of keeping the oil and water from splashing over on the crank pit or around the floor as the case may be, or off the other machinery.

Q Is the purpose or intent of that to keep firemen from getting their feet into the crank pit?

A No, not necessarily, that is to keep the oil and dingy water from splashing over the floor of the engine room.

Q Is it customary or practical in boats of this class to build a guard or to construct a guard for the purpose of keeping the firemen from getting their feet into the crank pit?

A It would be practical, it could be done.

Q I say, is it customary?

A No, not customary.

Q It could be done. That is, you could build a contrivance to keep a man from getting his feet in there, but could you make the machinery absolutely safe?

A No, you have to use your own judgment; a man that is working around the machinery must use his own judgment.

#### CROSS EXAMINATION.

BY MR. HALL:

Q You are still in the employ of the Puget Sound Tow Boat Company?

A Yes sir.

Q You are the Superintending Engineer?

A Yes sir.

Q Would that mean, Mr. Primrose, that when a tug is constructed you have charge of the construction?

A Yes sir.

Q Have any tugs been constructed while you have been Superintending Engineer?

A Three.

Q What are their names?

A Wyadda, Bahada and Tatoosh. Those have been constructed under my supervision.

Q How long since, within the past—

A 1903 is the latest.

Q When did you make an examination of the Argo?

A Probably two or three months ago, I can not state positively.

Q How complete an examination did you make?

A Went down and looked her over through the engine rooms.

Q Did you at that time examine this guard?

A Yes sir, splash plate, you mean?

Q I mean—You saw there a section or guard of sheet iron around the crank pit on one side toward the passage way?

A I saw a plate of thin sheet iron.

Q Where was that sheet iron fastened, to what was it fastened?

A To the columns.

Q On the inside towards the crank pit, or on the outside toward the passage way?

A Towards the passage way.

Q At the top and bottom, too?

A Fastened at the top, I didn't notice particularly the bottom.

Q You say, Mr. Primrose, that the engine in the Argo is installed practically the same as it is in all other tugs of the class and type of the Argo?

A Of her class, yes.

Q You say practically, that means there is some difference?

A In installation as well as difference in makes of engines.

Q Is there any difference in installation with reference to the pit being lower than the passage way in some tugs?

A Practically the same, some tugs of the larger class will be put above.

Q And in the smaller?

A All small tugs have them in the bottom of the vessel.

Q What is the difference in height between this passage around the crank pit and the bottom of the pit itself?

A It varies from 8 to 16 inches, generally.

Q What would you say the dept of this crank pit is on the Argo?

A I should say about 12 or 14 inches.

Q In your tugs, the Wyadda or the Bahada, or

the Tatoosh, are any of the crank pits lower in them like the Argo?

A They all are.

Q Are the engines in these tugs practically the same kind as in the Argo?

A Except the Tatoosh. Practically the same kind in the two first mentioned boats, the Wyada and the Bahada, a fore and aft compound engine. The engine in the Tatoosh is a larger engine, she has a triple expansion engine.

Q And therefore it would be higher?

A She is a trifle higher, yes sir.

Q Are the standards practically the same?

A Yes sir, practically the same.

Q The same distance apart?

A Yes sir.

Q What do you use for a splash guard?

A On the Wyada and the Bahada? We do not have the Bahada any more. We still have the Wyada. We have a canvas stretched across there. Just a sheet of canvas.

Q Have you any other thing across between the standards?

A Just an iron rod up above.

Q Is there an iron rod across the Argo's?

A No, hers is fastened around the columns.

Q How heavy is this iron rod?

A That is the reverse shaft, it is put there for the purpose of reversing the engines, and is made fast across the columns.



Q It serves then as a sort of protection, does it not?

A My recollection of the Argo is that she has one too above this splash pan as we call it.

Q Your splash guards, as you call them, do you put them on the inside or the outside of the columns?

A Both ways, whichever it serves best.

Q Which does it serve best.

A In some cases on the inside it serves best.

Q If the engines are practically the same, then one or the other would serve best on that particular engine, would it not?

A The engines are practically the same, but not just the same, the column would come a little bit lower down.

Q From your examination of the Argo, which side is the best to put that on?

A To keep the oil from splashing out, I should put it on the inside.

Q But used as a guard? Used as a guard, you would say it should be on the outside on the Argo?

A You would have to have something heavier than that.

Q How thick is this sheet iron on the Argo?

A Number 16, or number 18, I should judge.

Q Do you mean to say that take the thickness of sheet iron of the weight that is in the Argo and fastening it on the outside of the columns at the top and at the bottom, that it will not serve the purposes of a guard?

A No, I would not consider it a guard.

Q What is wrong with it?

A Not heavy enough.

Q What would give way about it?

A The iron would spring, it would bend.

Q Fastened at the sides, it would either have to break or give away at the fastenings, wouldn't it?

A No, it would spring at the center of it.

Q Fastened both at top and bottom?

A Yes sir, you can illustrate that here, (indicating), put a sheet of tin across between these chairs. If you press against the tin it will bend.

Q Yes, but it would break before you foot goes clear through?

A No, it would bend.

Q If it was stretched tight it would bend enough to allow a foot to go in there?

A Yes sir, thin sheet iron would. If you put pressure enough on it it will bend or stretch.

Q How can you bend a piece of sheet iron if it is fastened to something rigid at each end, how would it bend?

A With the pressure that comes against it.

Q The metal would have to stretch or give away at the fastenings, wouldn't it?

A It would bend in. If it was heavy enough it would not bend in.

Q Then in order to have a guard there, a sufficient guard, you would have to have sheet iron there of sufficient thickness so it would not bend?

A That is it, with any pressure that comes against it.

Q Even if it were fastened securely at the ends to the columns?

A That thin stuff does not fasten very securely.

Q It would have to be of sufficient thickness so it would not bend?

A Yes sir.

Q Then you would have to have steel, would you not?

A You would have to have steel probably one-eighth to three-sixteenths thick.

Q Did you ever see a guard on a vessel either passenger or tugs as this was?

A Did I ever see a guard such as we have just described?

Q Yes.

A No, I have never used one.

Q Did you ever see one?

A No, not more than a pipe rail guard.

Q What do they use on passenger boats?

A The passengers do not go around the engines.

Q You never saw any around the engines?

A No, never allowed around the engines.

Q So you never use any sort of a guard?

A Except pipe rail guards, that is all.

Q What is to prevent an employee from falling into an engine?

A A pipe rail, or anything of that kind, and his own ability to handle himself around the engine.

Q You recognize the fact that in a small boat

like the Argo, it often pitches when out in rough waters?

A I recognize that fact because my boats do the same thing.

Q And the men working around there are more or less liable to be thrown into the crank pit, are they not?

A Not if using judgment and taking care of themselves.

Q And even at that they are liable—

A No one is perfectly safe around an engine machinery.

Q It would be practical, would it not, that is, it could be done I believe you testified?

A I did not say it is practical.

Q If I remember right, you said it would be practical it could be done.

A I said it could be done, but it is not practical.

Q What is impractical about it?

A You would box your engine in so you could not get at it.

Q You say it is not practical to put a heavy sheet iron in the place of what was on the Argo?

A No, those things have to be removed all the time.

Q It is just as much trouble to remove a thin sheet iron it would be to remove a heavier one?

A No, it has not the weight. You can handle five pounds considerably easier than five hundred pounds.

Q And it would have to be fastened just the same?

A Yes, surely.

Q You recognize, however, do you not, that there should be some sort of a guard there?

A No, I don't recognize that fact at all any more than other boats. The Wyadda has not got one, the Prosper has not even a splash pan on her, she has an engine practically the same.

Q She has not got a what?

A She has not even a splash pan.

Q Why don't you have a splash pan on her?

A She does not throw hers out.

Q Have you a pipe rail there?

A No.

Q None on the Prosper at all?

A None there at all.

Q Is the Prosper practically the same as the Argo?

A Practically the same, but not indentially the same.

Q Is the crank pit on the Prosper as low as the Argo's?

A Yes sir.

Q What is the difference?

A In what respect?

Q In regard to the cranks and crank pits, the way they are located? What is the difference in the way the engines are installed, just the same?

A Practically the same, yes sir.

Q The Prosper has a passage way around the engine as the Argo?

A On the same side of the engine as the Argo, yes sir.

Q Has no pipe rail, or anything?

A No.

Q If the manager of the company testified that he recognized that there should be a guard there and that he ordered a guard to be put in and this guard was put in there for that purpose, and not as a splash guard, but to keep employees from being thrown or falling into the crank pit, would you not say then that it was put there for that purpose?

A No, I would not. I would not say it was put there, I would say the man was mistaken in the idea he had it there for.

Q If he ordered one put in there, then this was not a sufficient guard?

A No.

Q What was wrong with it?

A Too light, I told you.

Q If there was a guard there for the purpose of a guard and not a sufficient guard, though it might be used for a guard, but the purpose in putting it there was to keep the men from falling or being thrown into the crank pit, and it was made of sheet iron as on the Argo and fastened on the inside at the top, but was not fastened at the bottom, would you say that was a proper guard for the purpose for which it was intended, if it were intended as a guard?

A In the first place, I wouldn't say it was intended for a guard, and in the second place it is not a guard. You can not get me to admit it was put there for a guard, because I can not do it. If it was put there as a guard the man did not know his business in putting it there.

Q If it was put there as a guard, it was not a proper guard?

A Yes sir.

Q In the first place it was too light?

A Yes sir.

Q In the second place it was not fastened properly?

A No, it was not.

#### RE-DIRECT EXAMINATION.

BY MR. BYERS:

Q If the man knew his business, would he put a guard there?

A Well, I don't know, he might put it there as his own idea, but I do not use them, and I have never had any trouble.

Q Men who are acquainted with your line of business do not as a general thing use them?

A No sir.

#### RE-CROSS EXAMINATION.

BY MR. HALL:

Q Mr. Primrose, coming back to this proposition of a guard being put there or not, so far as men are concerned, so far as the safety of men is con-

cerned, it would be safer, would it not, if there were a guard there? By a guard I mean a guard against their falling in?

A It would be safer if the engine was boxed up entirely.

Q I asked you—I want an answer to my question.

A I am answering your question. The engine would be safer if it was boxed entirely in.

Q If there were a guard between these two standards they could not fall or slip in there?

A Not in there, they might fall over.

Q It would be possible for their feet to slip in there?

A No.

Q But it would be safer to have a guard there?

A Safer, yes sir.

BY MR. BYERS:

Q And it would be more inconvenient and more impractical?

A Not practical at all, there is no question but what if it was practical they would have it done on all engines.

BY MR. HALL:

Q It would be just as practical outside of the question of a proper guard being heavier than this guard to have a heavy sheet iron guard as to have this?

A Now, suppose anything went wrong in those boats where you have to reach into them; you have to reach into them in a hurry. If you have a lot of



heavy guards to take down, you can't do it in a hurry.

Q What would you have to do with this guard?

A If it was put in there loosely, you can take it down just that much quicker.

Q If it were fastened up the same way it would take as much time to take it down if it were light as if it were heavy?

A No, the fastenings are lighter and easier to handle. Lots of them are only tied up.

Q With respect to this guard on the Argo, now, you say you would have to reach over it or take it down?

A Yes sir.

Q If it is fastened by U-bolts you would have to unfasten them too?

A Yes sir.

Q Do your work and put it back?

A Yes.

Q What is the difference between doing this and having a heavier guard there fastened in exactly the same way?

A U-bolts in the top, but the difference would be the fastenings are heavier and slower to handle, and the guard or plate would be so much heavier to handle. It would be much more inconvenient to handle, that is all the difference.

Q It is more inconvenient to handle?

A Yes sir.

## FURTHER PROCEEDINGS HAD.

On the 18th day of October, 1912, Alpheus A. Byers, Esq., Proctor for the Petitioner, and Calvin S. Hall, Esq., Proctor for the Claimant, appeared before me, and the Petitioner offered in evidence a Bill of Particulars filed by the Claimant as plaintiff in case No. 79700 in the Superior Court of the State of Washington, for King County, entitled, Ivor Nordstrom, a minor, etc., vs. Pacific Tow Boat Company, a corporation, defendant, which Bill of Particulars was received by the Commissioner, marked Exhibit A. The claimant admits that the above Bill of Particulars is a true copy filed in said case No. 79700.

The Petitioner also offered in evidence copies of Certificates of Inspection of the Steamer Argo, as follows:

1. A certificate of inspection dated November 10, 1906, for the inspection of said steamer, that being her first inspection, expiring November 10, 1907, and the same was received in evidence, marked Exhibit B.

2. A like certificate dated November 12, 1907, expiring November 12, 1908, which was received in evidence, marked Exhibit C.

3. A like certificate dated November 17, 1908, expiring November 17, 1909, which was received in evidence, marked Exhibit D.

4. A like certificate dated November 24, 1909, expiring November 24, 1910, which was received in evidence, marked Exhibit E.

Claimant objected to the introduction of these certificates on the ground that they are incompetent and immaterial.

October 19, 1912, the Petitioner, by Alpheus A. Byers, its proctor in this matter, and Calvin S. Hall, Proctor for Claimant, appeared before me. A certificate showing the names of the officers of the Pacific Tow Boat Company on November 22, 1910, dated October 19, 1912, was offered by the Petitioner and received in evidence and marked Petitioner's Exhibit F.

The said Petitioner also offered in evidence a Bill of Sale of the Steamer Argo from the Chesly Tow Boat Company to the Pacific Tow Boat Company, the Petitioner, given on the 27th day of February, 1909, certified to by the Deputy Collector of Customs, Jos. Elser, acting recording clerk, on the 19th day of October, 1912, to which is annexed a copy of the certificate of registry, all of which are received in evidence, marked Petitioner's Exhibit G.

On the part of the claimant at the suggestion of the attorney for Petitioner, it is stipulated before me that the Petitioner has paid all annual license fees due from it as a corporation to the State of Washington up to the present date.

WM. D. TOTTEN, Commr.

Indorsed: Commissioner's Report. Filed in the U. S. District Court, Western Wistrict of Washington, Oct. 28, 1912. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy.

*In the Superior Court of the State of Washing-  
ton for King County*

BILL OF PARTICULARS

Comes now the plaintiff herein, by his attorneys, Higgins, Hall & Halverstadt, and furnishes here-with a bill of particulars, as required by the order of Court in the above entitled action:

First: The amount claimed by said plaintiff in his complaint for loss of time and earning capacity is Fifteen thousand dollars (\$15,000.00).

Second: Amount claimed by plaintiff in his complaint for pain and suffering is Ten thousand dol-lars (\$10,000.00).

HIGGINS, HALL & HALVERSTADT,  
Attorneys for Plaintiff.

State of Washington,  
County of King.—ss.

John C. Higgins, being first duly sworn on oath deposes and says: That he is one of the attorneys for the plaintiff in the above entitled action; that he has read the foregoing bill of particulars, knows the contents thereof and believes the same to be true.

JOHN C. HIGGINS.

Subscribed and sworn to before me this 16th day of May, 1911.

Notary Public in and for the State of Washington,  
residing at Seattle.

Indorsed: Petitioner's Exhibit "A". Wm. D. Totten, Commission.

Filed in the U. S. District Court, Western Dist. of Washington, Oct. 28, 1912, Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy.

State of Washington,  
County of King.—ss.

This is to certify that the officers of the Pacific Tow Boat Company on November 22, 1910, were and ever since said date have been and are Frank M. Duggan, President, W. L. Beddow, Vice-President, and J. L. Bridge, Secretary.

FRANK M. DUGGAN, President.

State of Washington,  
County of King.—ss.

Frank M. Duggan, being first duly sworn, deposes and says: He is the President of the Pacific Tow Boat Company; that he has read the foregoing certificate, knows the contents thereof, and that the same is true.

FRANK M. DUGGAN.

Subscribed and sworn to before me this 19th day of October, 1912.

(SEAL) IRVIE E. DE ROY,  
Notary Public in and for the State of Washington,  
residing at Seattle.

Indorsed: Petitioner's Exhibit "F". Wm. D. Totten, Commissioner.

Filed in the U. S. District Court, Western Dist. of Washington, Oct. 28, 1912. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy.

## THE UNITED STATES OF AMERICA

### BILL OF SALE OF DOCUMENTED VESSELS

Know ye, Chesley Tow Boat Company, a corporation organized under the laws of the State of Washington, sole owner, for and in consideration of the sum of One (\$1.00) dollar, lawful money of the United States of America, to it in hand paid, before the sealing and delivery of these presents by the Pacific Tow Boat Company, a corporation organized under the laws of the State of Washington, the receipt whereof it does hereby acknowledge and is therewith fully satisfied, contented and paid, has bargained and sold and by these presents does bargain and sell unto the said Pacific Tow Boat Company, its successors and assigns, the whole of the following scows and steamers to-wit:

#### Steamer ARGO

together with the whole of the masts, engines, boilers, bowsprits, sails, boats, anchors, cable, tackle, furniture and all other necessaries thereunto belonging; the certificate of registry or enrollment of which said scows and steamers are as follows: viz:

See copy of certificate of registry hereto attached.

To have and to hold, scows and steamers and appurtenances thereunto belonging unto the said Pa-

cific Tow Boat Company, its successors and assigns, to the sole and only proper use, benefit and behoof of it, the said Pacific Tow Boat Company, its successors and assigns forever.

In testimony whereof, the said Chesley Tow Boat Company has caused these presents to be signed by its President and Secretary and its corporate seal to be hereunto affixed this 27th day of February, in the year of our Lord, one thousand nine hundred and nine.

CHESLEY TOW BOAT COMPANY,

W. R. CHESLEY, President.

Corporate seal. J. L. BRIDGE, JR., Secy.

State of Washington,  
County of King.—ss.

I, Frank P. Dow, a notary public in and for the State of Washington, residing at Seattle, in the above named county and state, duly commissioned, sworn and qualified, do hereby certify that on this 27th day of February, A. D. 1909, before me personally appeared W. R. Chesley, President, and J. L. Bridges, Jr., Secretary, to me known to be the individuals who as President and Secretary respectively of the Chesley Tow Boat Company, the corporation that executed the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of the said corporation for the uses and purposes therein mentioned and on oath stated that they were authorized to exe-

cute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this 27th day of February, 1909.

FRANK P. DOW.

Notary Public in and for the State of Washington,  
residing at Seattle.

(SEAL)

Received for record, March 11, 1909, 9:00 A. M.  
Recorded in Book 5 Misc., page 189.

JOS. ELSER,

Acting Recording Clerk.

I certify this to be a true copy of the original  
Bill of Sale on file in this office.

JOS. OLSEN,

Deputy Collector.

(SEAL)

Custom House, Port Townsend, Wash., Oct. 19,  
1912.

THE UNITED STATES OF AMERICA

Department of Commerce and Labor

Bureau of Navigation

Permanent Register No. 39 B.

Official No. 203652.

### CERTIFICATE OF REGISTRY

In Pursuance of Chapter One, Title XLVIII,  
"Regulation of Commerce and Navigation," Re-



vised Statutes of the United States, W. R. Chesley, of Seattle, Wash., President, having taken and subscribed the oath required by law, and having sworn that The Chesley Tow Boat Company, a corporation organized under the laws of the State of Washington, is the only owner of the vessel called the ARGO, of Seattle whereof Thos. T. Engleskjen is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1906, at Port Blakeley, Wash., of wood, as appears by P. E. #56 issued at Port Townsend, Nov. 14, 1906; surrendered, trade changed; and said enrollment having certified that the said vessel is a St. s.; that she has one deck, one mast, a sharp head, and a round stern; that her register length is 67.1 feet, her register breadth 20 feet, her register depth 9 feet; that she measures as follows:

	Tons	100ths
Capacity under tonnage deck.....	60	51
Capacity between decks above tonnage deck .....	4	50
		-----
Gross tonnage.....	65	
Propelling power, 20.80.		
Total Deductions.....	20	80
		-----
Net Tonnage .....	44	

Given under my hand and seal, at the Port of

Seattle, this 12th day of June, in the year one thousand nine hundred and seven.

E. E. KELLY,  
Deputy Collector of Customs.  
E. T. CHAMBERLAIN,  
Commissioner of Navigation.

Indorsed: Petitioners Exhibit "G" Wm. D. Totten, Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Oct. 28, 1913. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy.

#### TITLE OF COURT AND CAUSE.

BYERS & BYERS, For Petitioner.  
WALTER S. FULTON,  
HALL & COSGROVE, For Respondent.

#### BY THE COURT:

On November 22, 1910, Ivor Nordstrom, while serving in the capacity of fireman on the steam tug "Argo" was severely injured, necessitating the amputation of his left leg below the knee. A passageway was maintained around the engine and crankpit, and a sheet-iron guard separated the crankpit from the passageway. Nordstrom while in the line of his employment and in going along the passageway was thrown, by a lurch of the tug, against the sheet-iron guard so that his left foot struck the bottom and

gave way, permitting his foot to extend into the crankpit and against the revolving cranks in the pit. By reason of the construction of the guard he was unable to withdraw his foot and he received his injury from the revolving cranks crushing and mangleing his left leg.

Thereafter he brought suit in the Superior Court of King County. Subsequent thereto, the Pacific Tow Boat Company, as owner of the tug "Argo," petitioned this court for a limitation of its liability, and the suit in the State Court was accordingly enjoined. Issues were made up in this Court and the testimony of the parties taken before a commissioner.

The matter came on for final hearing before the Court on the first day of December, 1912, and in addition to the oral arguments, the respective parties have submitted briefs herein. Three questions are presented—(1) The right of the Petitioner to limit its liability; (2) The right of the claimant to recover; (3) The amount of such recovery if he is entitled to recovery.

The time available to the Court will only permit a brief announcement of its conclusions in this cause which are as follows:

First:—The fact that there is but a single claimant is no bar to proceedings in admiralty under the limited liability act. The Hoffman's, 171 Fed. 455, citing all the earlier cases.

While the principal argument of claimant against the right of the petitioner to claim the benefit of the

limited liability act, was founded upon the ground that there was but one claimant, I think there are other objections occurring on the record that must be considered. The further question is, is the owner under all the facts in this case, and irrespective of there being but one claimant, entitled to claim the benefit of the limited liability act, and if not, what order should be made in the case.

It would seem that the answer to the first question depends upon the personal relations that the executive officers of the Corporation bore to the control, management and operation of the tug boat. In *La Bourgogne*, 210 U. S. 95, the Supreme Court distinguishes between mere negligence on the part of the owner and privity and knowledge. At page 122 of the opinion Chief Justice White says:

“Without seeking presently to define the exact scope of the words privity and knowledge, it is apparent from what has been said that it has been long since settled by this court that mere negligence, pure and simple, in and of itself, does not necessarily establish the existence on the part of the owner of a vessel of privity and knowledge within the meaning of the statute.”

In *The Annie Faxon*, 75 Fed. 312, Judge Gilbert seems to distinguish between defects which are apparent and of such a character as to be detected by the inspection of an unskilled person, and defects of which the owner has no knowledge and which are

not apparent to the ordinary observer, but which require for their detection the skill of an expert.

It would seem, however, from the decision in *The Republic*, 61 Fed. 109, which has often been cited with approval, that there must be some personal fault on the part of the owner before he can be deprived of the benefit of the statute. In other words, it would seem that the owner of a ship may turn its management over to competent agents and place it beyond his own personal supervision and that if he does so he may claim the benefit of the statute, even though an injury occurs from defects which are open and apparent. In view of the language of the Supreme Court of the United States I deem the latter the more correct rule.

It appears from the evidence that the tug boat was placed in charge of competent officers at all times and that none of the executive officers of the company took personal charge, control or supervision of it, nor does it appear that they were present or had notice of the defect in question. This being the case I am of the opinion that the owner is entitled to claim the benefit of the statute. In reaching this conclusion I have considered that the burden of proof is upon the owner to show a want of privity or knowledge. *McGill vs. Michigan S. C. Co.* 144 Fed. 788.

Where the owner is not entitled to claim the benefit of the statute the practice does not seem to be settled. In *re Jeremiah Smith & Sons*, 193 Fed. 395, a case similar to the present one, the decree was re-

versed by the Circuit Court of Appeals with directions to enter a decree against the owner for the damages sustained by the claimant without any limitation. On the other hand, in the case of *The Republic, supra.* a petition was dismissed by the District Court of Appeals. In *Weishshaar vs. Kimball, S. S. Co., 128 Fed 397,* from this Circuit, the judgment was reversed with directions to dismiss the petition, leaving the administratrix of the estate of the deceased at liberty to pursue her action for damages in the state court.

Second: The tug and the owner are liable in damages, beyond mere maintenance, cure and wages, where a seaman is injured in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship. *The Osceolo, 189 U. S. 158, 175* and cases cited.

Third: The offending shield or guard that caused the injury in this case, was an extremely dangerous contrivance, in fact a trap, and that its continued maintenance for a period of four years constituted negligence on the part of the owner within the rule above stated.

By stipulation herein it has been agreed that if the claim of the claimant shall be allowed in any other or greater sum than the sum of \$5000.00, for which a bond was theretofore filed by the petitioner, the petitioner will thereupon at the time either file an additional bond in the sum of \$3000.00, or pay toward the liquidation of the claim a sufficient

amount to liquidate the same in excess of the \$5000.00 bond up to the sum of \$8000.00, or then surrender the boat to the Court. In other words, by such stipulation the petitioner's liability is limited to the sum of \$8000.00 instead of the sum of \$5000.00.

It is urged that because the workmen's compensation act of the State of Washington allows not to exceed Fifteen Hundred Dollars for a similar injury that that amount should not be exceeded in this case. No mere money payment can ever compensate the claimant for the loss he has sustained. Keeping in view the fact that the claimant has already been paid the expenses of his cure, as far as that is possible, and the further fact that courts of admiralty are not disposed to make any such extraordinary allowance as juries in similar cases, a decree may be entered herein in claimant's favor for the sum of \$5000.00 with interest and costs.

Indorsed: Memorandum Decision. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 1, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

## TITLE OF COURT AND CAUSE.

### PETITION FOR RE-EXAMINATION AND REVIEW.

Comes now the petitioner herein and moves and petitions the Court for a re-examination and review

of the above entitled action, on the ground and for the reasons:

### I.

That the opinion of the Court shows that the Court over-looked the fact that it was immaterial to this cause whether the crank guard held the foot of the defendant when it was inserted therein, for the reason that the said crank was revolving at the rate of one hundred twenty (120) revolutions per minute, and that this would cause portions of said crank guard to strike the foot at the rate of two hundred forty (240) times per minute, which would render it impossible for the claimant to have withdrawn his foot whether it was retained by the so-called guard or not.

### II.

That the guard was constructed and maintained at all times in substantially the same way as so-called guards are usually maintained, and that the evidence does not materially dispute or tend to qualify this, and that what is ordinarily done cannot, as a matter of law, be deemed to be negligence, but must be deemed to be the ordinary care to which an employee is entitled.

### III.

That the Court has over looked the fact that it is the law that the engineers are fellow servants of the claimant and that, if it was the duty of any one to have made any change in the so-called guard, it was



the duty of the engineers and not the duty of this petitioner.

IV.

That, if the appliance was installed in practically the same manner and method as appliances in other vessels of a like character and type, that the said vessel is, as a matter of law, seaworthy.

V.

That petitioner herein has discovered new evidence which was unknown to it during the time of said hearing, and that said evidence is material and that petitioner desires that said cause be re-opened in order that said evidence may be entered.

VI.

That this petitioner desires time in order to prepare affidavits setting forth the substance of said testimony.

ATTORNEYS FOR PETITIONER.

STATE OF WASHINGTON }  
 COUNTY OF KING } ss.

A. L. McNeally, being first duly sworn, deposes and says: that he is Manager of the petitioner herein; that he has read the foregoing petition, known the contents thereof and that the same is true as he verily believes.

.....

Subscribed and sworn to before me this.....  
day of March, 1913.

.....  
Notary Public residing at Seattle, Washington.

Indorsed: Petition for re-examination and review.  
Filed in the U. S. District Court, Western Dist. of  
Washington, Mar. 3, 1913. Frank L. Crosby, Clerk.

## TITLE OF COURT AND CAUSE.

### FINAL DECREE.

This matter having come regularly on for final hearing December 1st, 1912, above named petitioner, Pacific Towboat Company, a corporation, being represented by its proctors, Messrs. Byers & Byers, and Ivor Nordstrom, claimant and respondent, by his proctors, Walter S. Fulton, Esq., and Messrs. Hall & Cosgrove, the testimony having been therefore duly and regularly taken before a commissioner and duly and regularly returned to this court, and it appearing to the court that there is only one claim arising out of the facts set forth in libellant's petition for limitation of liability and that is the claim of Ivor Nordstrom, claimant and respondent, as shown by his claim and answer on file herein; and it further appearing to the court that the parties hereto have stipulated in writing which stipulation is on file herein, that if the claim of said claimant should be allowed in any sum greater than

the sum of Five Thousand Dollars (\$5000.00) for which a bond has heretofore been filed by the petitioner then that the said petitioner would thereupon either at said time file in said court an additional bond in the sum of Three Thousand Dollars (\$3000.00) or pay toward the liquidation of said claim a sufficient amount to liquidate said claim in excess of said Five Thousand Dollar (\$5000.00) bond up to the sum of Eight Thousand Dollars (\$8000.00) or surrender the said boat to the said court, it being the intent of said parties by said stipulation that the petitioner's liability should be limited to the sum of Eight Thousand Dollars (\$8000.00) instead of Five Thousand Dollars (\$5000.00);

NOW, THEREFORE, after hearing argument of respective counsel and after reading the testimony and briefs submitted herein, it is hereby ORDERED, ADJUDGED and DECREED as follows:

FIRST, That said petitioner is entitled to limit its liability on account of claims growing out of the facts set forth in libellant's petition and answer and claim of Ivor Nordstrom, respondent and claimant, to Eight Thousand Dollars (\$8000.00) and its liability on account of said claim is hereby limited to Eight Thousand Dollars (\$8000.00).

SECOND, That the claim of said Ivor Nordstrom be and hereby is allowed in the sum of Five Thousand Dollars (\$5000.00) with interest thereon from November 22d, 1910, together with his costs.

THIRD, That said petitioner, Pacific Towboat Company, a corporation, within three (3) days from the entry of this decree shall file an additional bond in the sum of Three Thousand Dollars (\$3000.00) or within said time pay toward the liquidation of said claim a sufficient amount to liquidate the claim in excess of the Five Thousand Dollar (\$5000.00) bond heretofore filed herein or within said time surrender said boat to said court.

FOURTH, That the petitioner, the Pacific Towboat Company, a corporation, within ten (10) days from the date of this decree do pay to said claimant, Ivor Nordstrom, the sum of Five Thousand Dollars (\$5000.00) with interest thereon at legal rate from November 22d, 1910, together with his costs, or cause to be paid into the registry of this court money sufficient to discharge and pay in full the said sum so ordered.

FIFTH, That if in making the payment prescribed by this decree said Pacific Towboat Company, a corporation, elects to and does deposit said sum hereby awarded in the registry of this court in such event they shall further pay the fees and lawful charges of the clerk of this court for receiving, keeping and paying out the sums of money so deposited and said clerk is hereby ordered to distribute said moneys so deposited to said claimant and respondent.

SIXTH, That upon the petitioner herein making the payments hereby prescribed or paying the moneys hereby directed to be paid into the registry

of this court, said Ivor Nordstrom, his agents, proctors and attorneys are hereby separately restrained and enjoined from the institution and prosecution of any and all suits against the Pacific Towboat Company, a corporation, or said steam tug, "Argo" in respect of said claim.

SEVENTH, That unless an appeal be taken from this decree within the time limited by law therefor, or the payments prescribed by this decree be made, the stipulators for value and for costs on behalf of the said petitioner do cause the engagement of their stipulations to be performed, or do show cause upon a notice of four (4) days why execution should not issue against them, their goods, chattels and lands.

DATED at Seattle, Washington, March 3d, 1913.

CLINTON W. HOWARD,  
Judge.

Indorsed: Final Decree. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 3, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

## TITLE OF COURT AND CAUSE.

## NOTICE.

To the above named libellant, Pacific Tow Boat Company, and to Messrs. Byers & Byers, its proctors:

You and each of you will please take notice that the undersigned proctors for claimant and respondent will apply to the clerk of the above entitled court on the 8th day of March, 1913, or as soon thereafter as counsel may be heard to tax the costs in the above entitled action.

DATED at Seattle, Washington, March 7th, 1913.

HALL & COSGROVE,  
WALTER S. FULTON,

Proctors for Claimant and Respondent, Ivor Nordstrom.

Copy of the within Notice received and due service of same acknowledged this 7th day of March, 1913.

BYERS & BYERS,  
Attorneys for Libellant.

Indorsed: Notice. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 7, 1913, Frank L. Crosby, Clerk. By E. M. L. Deputy.

## TITLE OF COURT AND CAUSE.

## MEMORANDUM OF COSTS AN DISBURSEMENTS TO BE TAXED AGAINST LIBELLANT, PACIFIC TOW BOAT CO. IN FAVOR OF RESPONDENT AND CLAIMANT, IVOR NORDSTROM.

Clerk's fee.....	\$10.00
Commissioner's charges.....	37.40
Witness fees, W. R. Chesley, 1 day and 2 miles .....	1.60
Witness fees, F. R. Underwood, 1 day and 2 miles .....	1.60
Witness fees, Frank Brownfield, 1 day and 2 miles .....	1.60
Witness fees, Thomas F. Ossinger, 1 day and 2 miles .....	1.60
Witness fees, John S. Wright, 1 day and 2 miles .....	1.60
Cost of Bond.....	10.00
Proctor's fees .....	20.00
	-----
Total .....	\$85.40

UNITED STATES OF AMERICA,  
 WESTERN DISTRICT OF WASHINGTON, } ss.  
 NORTHERN DIVISION,

CALVIN S. HALL, being first duly sworn on oath deposes and says: I am one of the proctors for the above named claimant and respondent; I have

read the foregoing statement of Costs and disbursements, know the contents thereof and the same is a true statement of the costs and disbursements actually disbursed or necessarily incurred in the above entitled matter.

CALVIN S. HALL.

Subscribed and sworn to before me, this 7th day of March, 1913.

WILLIAM E. FROUDE.

Notary Public in and for the State of Washington,  
residing at Seattle.

(SEAL)

Copy of the within Statement of Costs received and due service of same acknowledged this 7th day of March, 1913.

BYERS & BYERS,  
Attorneys for Libellant.

Indorsed: Statement of Costs and Disbursements to be Taxed. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 7, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.



## TITLE OF COURT AND CAUSE.

ORDER FIXING AMOUNT OF BOND  
AND STAYING PROCEEDINGS.

This cause came on regularly to be heard on the application of the Petitioner herein that an Order be made fixing the amount of the Bond to stay proceedings on appeal herein, and it appearing to the Court that a bond in the sum of Seven Thousand Five Hundred Dollars (\$7500.00), with good and sufficient sureties, is a sufficient bond and that on the filing of such bond herein, the petitioner will be entitled to have proceedings stayed until the final determination of said cause in the Circuit Court of Appeals for the Ninth Circuit,

THEREFORE, IT IS BY THE COURT HEREBY ORDERED AND ADJUDGED, That the bond to stay proceedings on appeal herein be, and the same hereby is, fixed in the sum of Seven Thousand Five Hundred Dollars (\$7500.00), and IT IS FURTHER ORDERED AND ADJUDGED that on the filing of a good and sufficient bond herein within five day from the date of this Order, in the sum of Seven Thousand Five Hundred Dollars (\$7500.00), conditioned according to law, that proceedings herein be, and the same hereby are, stayed until the final determination of this cause in the Circuit Court of Appeals for the Ninth Circuit.

EDWARD E. CUSHMAN, Judge.

Dated this 8th day of March, 1913.

Indorsed: Order Fixing amount of bond and staying proceedings. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 8, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

## TITLE OF COURT AND CAUSE.

### NOTICE OF SUBSTITUTION OF PROCTOR FOR PETITIONER.

To Calvin S. Hall and Walter S. Fulton, Proctors  
for Ivor Nordstrom:

You and each of you will please take notice hereby of the substitution of C. H. Hanford, whose office and postoffice address is Room 212 Colman Building, Seattle, as Proctor for the above named Petitioner.

Dated April 10, 1913.

C. H. HANFORD,  
Proctor for Petitioner.

O. K.

BYERS & BYERS.

Indorsed: Notice of Substitution of Proctor for Claimant. Filed in the U. S. District Court, Western Dist. of Washington, April 14, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

## TITLE OF COURT AND CAUSE.

## NOTICE OF APPEAL.

To Frank L. Crosby, Clerk of the above entitled Court, and to Ivor Nordstrom, Intervener claiming damages in the above entitled cause, and Calvin S. Hall and Walter S. Fulton, Proctors for said intervener.

You and each of you will please take notice hereby that the Pacific Tow Boat Company, a corporation of the State of Washington, owner of the tug "Argo," petitioner in the above entitled cause, appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from that part of the final decree of the United States District Court for the Western District of Washington, Northern Division, entered in said cause on the 3rd day of March, 1913, which awards damages with interest and costs to said intervener Ivor Nordstrom and requires this petitioner to file an additional bond or liquidate the claim of said intervener.

The following are the only questions which this appellant desires to have reviewed, viz:

1. Do the pleadings and evidence justify the findings and decision of the Court that the injury suffered by Ivor Nordstrom was caused by an appliance or equipment of the tug "Argo," referred to and styled in the written decision filed in said cause as "the offending shield or guard"?

2. Was the so-called shield or guard, referred to in said written decision, in fact a dangerous contrivance?

3. Do the pleadings and evidence justify the Court's findings and decision that there was continued maintenance of a dangerous contrivance on the tug "Argo"?

4. Do the pleadings and evidence justify the Court's findings and decision that continued maintenance on the tug "Argo" of a dangerous contrivance constituted negligence chargeable to her owner?

5. Was the element of negligence involved in the cause of the injury suffered by Ivor Nordstrom, chargeable entirely to one or more of his fellow servants?

6. Was the injury suffered by Ivor Nordstrom caused by an ordinary accident, comprehended in the risks which are legally deemed to be assumed by acceptance of employment in the capacity in which he was serving when the accident happened?

7. Is the amount of damages awarded to Ivor Nordstrom by the decision and decree of the District Court excessive?

8. Is the award to Ivor Nordstrom by the decision and decree of the District Court of interest from the date of his injury in addition to the damages assessed warranted by law?

Dated July 12, 1913.

C. H. HANFORD,  
Proctor for Pacific Tow Boat Co.

## RETURN ON SERVICE OF WRIT.

WESTERN DISTRICT OF WASHINGTON }  
 UNITED STATES OF AMERICA } ss.

I hereby certify and return that I served the annexed Notice of Appeal on the therein-named Calvin S. Hall by handing to and leaving a true and correct copy thereof with Calvin S. Hall personally at Seattle, Wash., in said District on the 12th day of July, A. D. 1913.

JOSEPH R. H. JACOBY,  
 U. S. Marshal.  
 By H. V. R. Anderson, Deputy.

Indorsed: Notice of Appeal. Filed in the U. S. District Court, Western District of Washington, July 12, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

## TITLE OF COURT AND CAUSE.

## ASSIGNMENT OF ERRORS.

Comes now the Pacific Tow Boat Company, a corporation of the State of Washington, the petitioner in the above entitled cause and assigns the following errors in the decision and decree to be reviewed on appeal by the Circuit Court of Appeals for the Ninth Circuit in said cause, viz:

1. The District Court erred in finding and deciding that the injury suffered by Ivor Nordstrom was caused by an appliance or equipment of the tug "Argo," referred to in the Court's written decision as "the offending shield or guard".

2. The District Court erred in finding and deciding that the so-called shield or guard referred to was a dangerous contrivance.

3. The District Court erred in finding and deciding that the so-called dangerous contrivance had been continuously maintained for four years and that continuous maintainance thereof was negligence imputable to the owner of the "Argo".

4. The District Court erred in failing to find that the injury suffered by Ivor Nordstrom was caused by lurching or rolling of the Argo and by the crank of her engine which was not defective.

5. The District Court erred in failing to find that the injured suffered by Ivor Nordstrom was caused by an ordinary accident comprehended in the risks incidental to his employment and assumed by him.

6. The District Court erred in failing to find that the only negligence involved in the cause of the injury suffered by Ivor Nordstrom was chargeable entirely to a fellow servant to-wit: the engineer of the "Argo" in misplacing the so-called shield or guard and failing to keep it securely fastened; and contributory negligence of said Nordstrom.

7. The District Court erred in awarding to said Nordstrom an excessive amount of damages.

8. The District Court erred in awarding to said Nordstrom interest from the date of his injury on the \$5000.00 assessed as his damages.

9. The District Court erred in rendering a decree in favor of said Ivor Nordstrom and against the petitioner.

Dated July 12, 1913.

Respectfully submitted,

C. H. HANFORD.

Proctor for Pacific Tow Boat Company, Appellant.

Copy of within Assignment of Errors received and due service of the same acknowledged this 14th day of July, 1913.

CALVIN S. HALL  
and WALTER S. FULTON,  
Proctors for Ivor Nordstrom.

Indorsed: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, July 14, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

## TITLE OF COURT AND CAUSE.

CERTIFICATE OF CLERK DISTRICT  
COURT TO APOSTLES.

UNITED STATES OF AMERICA  
WESTERN DISTRICT OF WASHINGTON } ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify that the foregoing and hereunto annexed two hundred and fifty-four pages, numbered from 1 to 254, inclusive, contain a full and true transcript of the records in the said District Court, made up pursuant to Section 1 of Rule 4 of Admiralty, of the United States Circuit Court of Appeals, for the Ninth Circuit, and the instructions of C. H. Hanford, Esquire, Proctor for Petitioner and Appellant, in the cause entitled In the Matter of the Petition of the Pacific Tow Boat Company, a corporation of the State of Washington, owner of the Tug "Argo," for the Limitation of Liability No. 4779.

I further certify that the costs of preparing and certifying to the foregoing and hereunto annexed Transcript of Appeal is the sum of \$106.10, and that the same has been paid to me by Proctor for Petitioner and Appellant.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court this 26th day of July, 1913, and of the Independence of the United States the One hundred thirty-eighth.

FRANK L. CROSBY,

(SEAL)

Clerk.